THE RIGHTS Of the People of England, Concerning IMPOSITIONS.

Stated in a Learned Argument; by Sir *Henry Yelverton* Knight and Baronet, late one of the Juſtices of the Court of Common-pleas.

With a Remonſtrance preſented to the Kings moſt excellent Majeſty, by the Honorable Houſe of Commons, in the Parliament, *An. Dom.* 1610. *Annoque Regis Jac.* 7.

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BIBLIOTHECA REGIA

TO THE Courteous READER.

THis excellent Treatise of the no less worthy Author, happily falling into my hands, I instantly thought it my duty to make that publick, which had given so much useful satisfaction to many learned, and judicious, in private; remembring that antient Adage, Bonum quò communius, eò præstantius

I hope it is needless to commend either the Reverend Author deceased, the Treatise, its use, or stile; since the Authority by which it is published, is a sufficient argument of their known worth.

If thou kindly accept of his good meaning, whose onely aim in the publishing hereof was the Common good, it will be an encouragement to him (and others) to present to thy view, what may hereafter fall into his hands worthy thy further perusal.

Thine; *J. B.*

20. *Maii.* 1641.

AT a Committee appointed by the Honourable Houſe of Commons, for examination of Books, and of the licencing and ſuppreſſing of them, *&c.*

It is Ordered, That this Treatiſe be publiſhed in Print.

Sir *Edward Deering*, Kt. and Baronet.

☞ *There is lately come forth, An exact Abridgment of the Records in the Tower of* London, *from the reign of King* Edward *the Second, unto* Richard *the Third, of all the Parliaments holden in each Kings reign, and the ſeveral Acts in every Parliament, together with the Names and Titles of all the Dukes, Marqueſſes, Earls, Viſcounts and Barons ſummoned to every of the ſaid Parliaments. Collected by Sir* Robert Cotton, *Knight and Baronet. And are to be ſold by* William Leak *at the Crown in Fleetſtreet, betwixt the two Temple gates.*

A Remonſtrance delivered to His Majeſty in writing, after the inhibition given by Him to the Commons Houſe of Parliament, aſwell by word of mouth, as by Letters, not to proceed in the examining his Right to Impoſe without aſſent of Parliament.

To the Kings moſt excellent Majeſty.

Moſt gracious Sovereign,

WHereas we your Majeſties moſt humble Subjects, the Commons aſſembled in Parliament, have received firſt by meſſage, and ſince by ſpeech from your Majeſty a command of reſtraint, from de-

bating in Parliament your Majesties right of Imposing upon your Subjects goods exported, or imported out of, or into this Realm; yet allowing us to examine the grievance of these Impositions in regard of quantity, time, and other circumstances of disproportion thereto incident: We your said humble Subjects nothing doubting but that your Majesty had no intent by that command to infringe the antient and fundamental right of the Liberty of Parliament in point of exact discussing of all matters concerning them, and their possessions, goods, and

rights

rights whatſoever, which yet we cannot but conceive to be done in effect by this command, do with all humble duty make this Remonſtrance unto your Majeſty.

Firſt, We hold it an antient, general and undoubted right of Parliament, to debate freely all matters which do properly concern the Subject, and his right or eſtate; which freedom of debate being once fore-cloſed, the eſſence of the liberty of Parliament is withthal diſſolved.

And whereas in this caſe the Subjects right on the one ſide, and your Majeſties Prerogatives on the other, cannot poſſibly

possibly be severed in debate of either: We alledge that your Majesties Prerogatives of that kinde concerning directly the Subjects right and interest, are daily handled and discussed in all Courts at *Westminster*, and have been ever freely debated upon all fit occasions, both in this and all other former Parliaments, without restraint; which being forbidden, it is impossible for the Subject, either to know, or to maintain his Right and Propriety to his own Lands and Goods, though never so just and manifest.

It may further please your most

moſt excellent Majeſty to underſtand, that we have no minde to impugn, but a deſire to inform our ſelves of your Highneſs Prerogative in that point, which (if ever) is now moſt neceſſary to be known; and though it were to no other purpoſe, yet to ſatisfie the generality of your Majeſties Subjects, who finding themſelves much grieved by theſe new Impoſitions, do languiſh in much ſorrow and diſcomfort.

Theſe Reaſons (Dread Sovereign) being the proper Reaſons of Parliament, do plead for the upholding of this our antient Right and

Liberty

Liberty. Howbeit seeing it hath pleased your Majesty to insist upon that Judgment in the Exchequer, as being direction sufficient for us without further examination: Upon great desire of leaving your Majesty unsatisfied in no one point of one of our intents and proceedings, We protest touching that Judgement, that we neither do nor will take upon us to reverse it; but our desire is to know the Reasons whereupon the same was grounded; and the rather for that a general conceit is had, That the Reasons of that Judgement may be extended much further, even

to

to the utter ruine of the antient liberty of this Kingdom, and of your Subjects Right of propriety to their Goods and Lands.

Then for the Judgment it ſelf, being the firſt and laſt that ever was given in that kind (for ought appearing unto us,) aud being onely in one Caſe, and againſt one man, it can binde in law no other, but that perſon; and is alſo reverſible by Writ of error granted heretofore by Act of Parliament; and neither he nor any other Subject is debarred by it, from trying his Right in the ſame or like caſe, in any of your Majeſties

Courts

Courts of Record at *Westminster.*

Lastly, We nothing doubt, but our intended proceeding in a full examination of the right, nature, and measure of these new Impositions (if this restraint had not come between) should have been so orderly and so moderately carried and imployed to the manifold necessities of these times, and given your Majesty so true a view of the state and right of your Subjects, that it would have been much to your Majesties content and satisfaction, (which we most desire,) and removed all causes of fears and

and jealouſies from the loyal hearts of your Subjects, which is (as it ought to be) our careful endeavour: Whereas contrariwiſe in that other way directed by your Majeſty, we cannot ſafely proceed without concluding for ever the right of the Subject, which without due examination thereof we may not do.

We therefore your loyal and dutiful Commons, not ſwerving from the approved ſteps of our Anceſtors, moſt humbly and inſtantly beſeech your gracious Majeſty, that without offence to the ſame, we may according to the undoubted Right and Liberty

berty of Parliament, proceed in our intended courſe of a full examination of theſe Impoſitions; That ſo we may chearfully paſs on to your Majeſties buſineſs, from which this ſtop hath by diverſion ſo long with-held us. And we your Majeſties moſt humble, faithful, and loyal Subjects, ſhall ever (according to our bounden duty) pray for your Majeſties long and happy reign over us.

The

The question is, whether the King, without assent of Parliament, may set impositions upon the wares and goods of merchants exported, and imported, out of, and into this Realme.

THree things have been debated in this Parliament, that have much concerned the right of our whole Nation, of which every one of them hath exceeded the other by a gradation in weight and moment.

The first, was the change of our name, which was a point of honour, wherein we shewed our selves not willing to leave

that name, by which our anceſtors made our Nation famous: yet have we loſt it, ſaving onely in thoſe caſes where our ancient and faithfull Procetor, the Common Law doth retaine it.

The name of Britaine not admitted in legall proceedings.

The ſecond was the union; a queſtion of greater moment, for that concerned the freehold of our whole Nation, not in ſo high a point as having, or not having; but in point of Diviſion and participation, that is, whether we ſhould enjoy the benefits and liberties of the kingdome our ſelves onely as we and our anceſtors have done, or admit our neighbour Nation to have equall right in them, and ſo make our own part the leſs, by how much the greater number ſhould be among whom the Diviſion was to be made. This was adjudged againſt us both Legally and Calvins caſe. Therefore in that we reſt, having [illegible] effect of this judgement which we [illegible] in the Poet,

Coke l. 7.

Virgil. Æn. l. 1. Dido's ſpeech to Æneas.

Tros Tyriuſque mihi nullo diſcrimine habetur.

The third is the queſtion now in hand, which exceedeth the other two in importance

tance & consequence, concerning the whole kingdome; for it is a question of our very essence, not what we shall be called, nor how we shall divide that we have, but whether we shall have any thing or nothing: for if there be a right in the King to alter the property of that which is ours without our consent, we are but tenants at his will of that which we have. If it be in the King and Parliament, Then have we propertie, and are Tenants at our own will: for that which is done in Parliament, is done by all our wills and consents. And this is the very state of the question which is proposed, that is, whether the King may impose without consent of Parliament.

Impositions are of two natures, *Forrtine*, and *Intestine*.

Intestine, be those which are raised within our land in the commerce and dealing that is at home within our selves, and may aswell for that reason be so called, as for that *vescuntur intestina Reipublicæ*, They are fed and nourished with the consuming and wasting of the entralls of the Common wealth. Against these I need not to speake; for the

Kings learned Councell have with great honour and conſcience in full Councell acknowledged them to be againſt the law.

Therefore I will apply my ſelf to ſpeak of impoſitions forreigne, being the ſingle queſtion now in hand, and maintained on the Kings behalfe with great art and eloquence.

The inconvenience of theſe impoſitions to the Common-wealth, that is, how hurtfull they are to the Merchants, in impoveriſhing them in their eſtates; to the King in the increaſing of his revenues by decay of traffique, and to the whole people in making all commodities exceſſive deare, is confeſſed by all, and therefore need no debate. The point of right is now only in queſtion, and of that I will ſpeak with conſcience and integrity, rather deſirous that the truth may be knowne, and right be done, than that the opinion of my ſelf or any other may prevaile.

The occaſion of this queſtion was given by the book of rates lately ſet out, affronted with the copy of Letters Patents, dated July 28. 6. Jac. In

which

which book, beſides the rates, is ſet down every kind of merchandiſe, exported and imported, for the true anſwering of ſubſidy to the King, according to the Statute of Tonnage and Poundage.

In the firſt yeare of his reigne there is an addition of impoſitions upon all thoſe kind of wares, which within the book are expreſſed, and the rate of the impoſition as high and in ſome caſes higher than the rate of the ſubſidy: And this declared to be by authority of thoſe Letters Patents. Hereupon conſidering with my ſelfe, that heretofore the ſetting on of one only impoſition without aſſent of Parliament, upon ſome one kinde of merchandiſe, and that for a ſmall time, and upon urgent neceſſity of actuall war, did ſo affect our whole Nation, and eſpecially the great Councel of the Parliament, being the Repreſentative body of the whole Common-wealth, that neither the ſun did ſhine, nor the rivers run their courſes until it was taken off by the publick judgment of the whole State.

I thought it concerned me, and other members of that Councell, that were no leſs truſted for our Countrey, than

than those in former times, and have their actions to guide and direct us, to have the same care they had in preserving the right and liberties of the people, having now more cause then they had, for that the impositions now set on without assent of Parliament, are not upon one or two speciall kinds of goods, but almost indefinite upon all, and do extend to the number of many hundreds, as appeareth by that printed book of rates, and are set in charge upon the whole kingdome as an inheritance to continue to the King, his heires and successors for ever: which limitation of estate in matter of impositions was never heard of, nor read of before, as I conceive.

The inducements expressed in these Letters Patents are much upon point of State, and with reference to the rights and practice of forraine Princes; For this I will not take upon me to enter into the consideration of such great mysteries of policie, and government, but will only put you in minde of that I observe out of *Tit. Livius* the Romane *Historiographer*: *Omnem divini humanique moris memoriam abolemus, cum nova peregrinaque patriis & priscis praferimus.*

Tit. Liv. l. 8.

To

To that which hath been ſpoken for the Kings Prerogative, I will give anſwer to ſo much of it as I may conveniently in my paſſage through this debate: wherein I will principally endeavor to give ſatisfaction to ſuch new objections as were made by the worthie and learned Counſellor of the King that ſpake laſt, in maintenance of his Majeſties Prerogative.

The caſe in termes is this: The King by his Letters Patents before recited, hath ordained willed, and commanded that theſe new impoſitions contained in that book of rates ſhall be for ever hereafter payd unto him, his Heires, and Succeſſors, upon paine of his diſpleaſure; Hereupon the queſtion ariſeth whether by this Edict and Ordinance ſo made by the King himſelfe, by his Letters Patents of his own will and power abſolute, without aſſent of Parliament, he be ſo lawfully intituled to that he doth impoſe, as that thereby he doth alter the property of his ſubjects goods, and is enabled to recover theſe impoſitions by courſe of Law. Pat. July 28. *Iac.* 6.

I think he cannot; and I ground my opinion upon theſe foure reaſons.

1. It is againſt the naturall frame and

constitution of the policie of this kingdome, which is *jus publicum regni*, and so subverteth the fundamentall Law of the Realme, and induceth a new forme of state and government.

2. It is against the municipall Law of the Land which is *jus privatum*, the Law of property and of private right.

3 It is against divers Statutes made to restraine our King in this point.

4. It is against the practice and action of our Common wealth, *contra morem majorum*; and this is the modestest rule to limit both Kings Prerogatives, and Subjects Liberties.

Upon the first, and fourth of these foure principal grounds I will more insist then upon the second and third, both for that in their own nature they are a more proper matter for a Councel of State, to the judgement of which I apply my discourse (and they have not been enforced by others :) As also for that the other two (as more fit for a barre, and the Courts of ordinary justice) have by some professors of the Law been already most learndnedly and exquisitely discussed.

For

For the first: it will be admitted for a rule, and ground of State, that in every Common-wealth and government there be some rights of Soveraignty, *jura Majestatis*, which regularly, and of common right doe belong to the Soveraign power of that State; unless Custome, or the provisional ordinance of that State doe otherwise dispose of them: which Soveraigne power is *potestas suprema*, a power that can controule all other powers, and cannot be controuled but by it self

It will not be denied that the power of imposing hath so great a trust in it, by reason of the mischiefes may grow to the Common-wealth by the abuses of it, that it hath ever been ranked among those rights of Soveraign power.

Then is there no further question to be made but to examine where the Soveraigne power is in this Kingdome; for there is the right of imposition.

The Soveraigne power is agreed to be in the King: but in the King is a two-fold power, the one in Parliament, as he is assisted with the consent of the whole State; the other out of Parliament as he

is

is sole, and singular, guided merely by his own will. And if of these two powers in the King, one is greater than the other, and can direct and controule the other; that is *Suprema Potestas*, the Soveraigne power, and the other is *subordinata*.

It will then be easily proved, that the power of the King in Parliament is greater than his power out of Parliament, and doth rule and controule it; for if the King make a grant by his Letters Patents out of Parliament, it bindeth him and his successors, he cannot revoke it, nor any of his Successours; But by his power in Parliament he may defeate and avoyd it; and therefore that is the greater power.

If a judgement be given in the Kings Bench, by the King himselfe (as may be, and by the Law is intended) a writ of Error, to reverse this judgement, may be sued before the King in Parliament, which writ must be granted by the Chancellor, upon bill indorsed by the King himself, as the book is 1 *H*. 7. 19. 6. And the forme of the writ of Error is, that it being directed to the Chiefe Justice of the Kings Bench; *Quia in recordo & processu*

1 *H*. 7. 19 6.

Lib. Intrac. fol. 302. c. 1.

ceſſu, ac etiam in redditione judicii I. quæ-
quæ fuit in Curiâ noſtrâ coram nobis, Er-
ror intervenit manifeſtus ad grave dam-
num, &c. Nos errorem (ſi quis fuerit)
modo debito corrigi, & partibus prædictis
plenam & celerem juſtitiam fieri volentes,
in hâc parte vobis mandamus, quòd Re-
cordum & proceſſum loquel' e illius cum om-
nibus ea tangentibus, in pra'ens Parlia-
mentum noſtrum ſub ſigillo tuo diſtinct'
& aperte mittas & hoc breve, ut inſpectis,
&c. nos de Conſilio & adviſamento Domi-
norum ſpiritualium & temporal um, ac
Communitatis in Parliamento noſtro præ-
dicto exiſtentis, ulterius pro errore illo cor-
rigendo fieri faciamus quod de jure & ſe-
cundum legem & conſuetudinem Regni
noſtri Angliæ fuerit faciendum. So you ſee the Appeal is from the King out of the Parliament, to the King in Parliament; the writ is in his name; the rectifying and correcting the errours is by him, but with the aſſent of the Lords and Commons, than which there can be no ſtronger evidence to prove, that his power out of Parliament is ſubordinate to his power in Parliament; for in Acts of Parliament, be they lawes, grounds, or whatſoever

The booke is not ſo, that the Cõmons ſhould meddle.

whatſoever elſe, the Act and power is the Kings, but with the aſſent of the Lords and Commons, which maketh it the moſt ſoveraigne and ſupreame power above all, and controulable by none. Beſides this right of impoſing, there be others in the Kingdome of the ſame nature: As the power to make lawes; the power of Naturalization; the power of erection of arbitrary Government; the power to judge without appeale; the power to legitimate: all which do belong to the King only in in Parliament. Others there be of the ſame nature, that the King may exerciſe out of Parliament, which right is grown unto him in them, more in thoſe others by the uſe and practice of the Common-wealth: as denization, coynage, making warr: which power the King hath time out of minde practiſed, without the gain-ſaying and murmuring of his ſubjects: But theſe other powers before mentioned have ever been executed by him in Parliament, and not otherwiſe, but with the reluctation of the whole Kingdome.

Can any man give me a reaſon, why the

the King can only in Parliament make lawes ? No man ever read any law whereby it was ſo ordained ; and yet no man ever read that any King practiſed the contrary : Therefore it is the originall right of the Kingdome, and the very natural conſtitution of our State and policy, being one of the higheſt rights of Soveraigne power : So it is in naturalization, legitimation, and the reſt of that ſort before recited.

It hath been alleaged that thoſe which in this Cauſe have enforced their reaſons from this Maxime of ours (*That the King cannot alter the Law*) have diverted from the queſtion.

I ſay under favor they have not ; for that in effect is the very queſtion now in hand ; for if he alone out of Parliament may impoſe, he altereth the Law of England in one of theſe two maine fundamental points. He muſt either take his Subjects goods from them, without aſſent of the party, which is againſt the Law ; or elſe he muſt give his own Letters Pattents the force of a Law, to alter the property of his Subjects goods, which is alſo againſt the Law.

That

That the King of England cannot take his subjects goods, without their consent, it need not be proved more than a principle. it is *jus indigenæ*, an old homeborne right, declared to be Law by divers statutes of the Realme: As in 34 *E.* 3. cap 2. That no office of the Kings, or of his heires, shall take any goods of any manner of person without the assent and good will of the party, to whom the goods belonged. The same is declared in many other Statutes made against prisages and purveyances. Neither have ever any Kings attempted to go plainly and directly against that right, but have devised certaine legal colours and shadowes for their wrongfull doing in that kind, which I doe find were of three sorts: by way of Commission; by way of Loan; by way of Benevolence Commissions of all other were the most insolent; for they went out (as it were by authority to levy ayd of the people upon great necessity of the Commonwealth.) These were condemned in Parliament. 21 *E.* 3. *Num.* 16. upon a greivous complaint made of the use of them by the Commons, unto the King in Parliament: wherein

34 *E.* 3. c. 2.

Commissions, Loans or Privie Seales, Benevolence.

the

the people doe pray the King, that he would be pleased to remember how at the Parliament held the 17 year of his raign, and at the last Parliament, it was then accorded, and granted by their said Lord the King and his Councell, that there should goe out no Commissions out of Chauncery for Hobbeleries, Archers, and other charges to be levied upon the people, if they were not granted in Parliament; which ordinances were not observed by reason whereof the people were impoverished aed decayed, for which they prayed the King that he would be pleased to take pity of his people, and the ordinances and grants made to his people in Parliament to affirme and hold; And that if such Commissions goe out without assent of Parliament, that the Commons, which are grieved thereby, may have writs of *supersedeas*, according to the said Ordinance, and that the people be not bound to obey them.

That is, the Parliament.

To this the Kings answer is.

Si ul tiel imposition fuit fait per grand necessitie, & ceo del assent des Prelates, Counts,

Counties, Barons, & autz grandes & aſſomes des Commons adonq; preſents, Neant moins noſtre Seignior le Roy ne voet que tiel impoſition non duement faitz, ſoit treit in conſequence; eins voet que les ordinances dont ceſt petition fait mention ſoit bienment gardes.

Stowes annals. The laſt time that ever King attempted that courſe of exaction was 17 *H.* 8. upon the taking of the French King at *Pavia*, by the forces of *Charles* the fifth; Cardinal *Wolſey* having a purpoſe to put the King into a warre about that quarrell, and finding his cophers empty, adviſed this way, to ſend out Commiſſions, and by them to levie ayd of the people, according to the value of their eſtate; But this gave ſuch diſcontent to the whole Realme, that it cauſed in many places an actuall rebellion: and the Cardinal being called to give an account of this bad advice, did juſtifie this fact by the example of *Joſeph*, who adviſed *Pharaoh* to take the fifth part of his ſubjects goods: But when he ſaw that would not ſerve the turne, he

17. *H.* 8.

he falſely laid it upon the Judges, informing the King, he did it by their advice, being reſolved by them of the lawfulneſs of the fact. So you ſee that great Churchmen found more ſafety in matter of government of our Commonwealth, in making a falſe report of a point of the Common Law, then in a true Text of the Scripture. And if any Church men will endeavor by application of the Text of Scripture, to overthrow the antient Laws and Liberties of the Kingdom; I would adviſe them to be admoniſhed by the ill ſucceſs of the Cardinal, in this particular action, and by the miſerable cataſtrophe of his whole life and fortunes.

Loans and Appreſts were thoſe which we call Privy Seals, which though they were more moderate in ſhew, yet being made againſt the good will of the parties, were as injurous indeed as the other. The Commons in Parliament, 25 *E* 3. *Num.* 16. made a grievous complaint to the King againſt the uſe of them, and prayed, that none from thenceforth ſhould be compelled to make Loans againſt their will, and they gave this reaſon, in their petition for that it is againſt reaſon, and the

Loans and Privy Seals.

Rot. par. 25. *E* 3. *num.* 16.

franchiſe of the land, and prayed that reſtitution might be made to thoſe that have made ſuch Loans.

To this the Kings reſcript was; *It pleaſeth our Lord the King it be ſo.*

Benevolence. Laſtly, Came in thoſe kinde of exactions, which were termed by the fair name of *Benevolences*; but they became ſo odious, as they gave the occaſion of a good Law to be made againſt themſelves, and againſt all other ſhifts, and devices, by what new terms ſoever impoſed upon the Subjects: the Law is, 1 *R.* 3. *cap.* 2 and is thus; The King remembring how the Commons of this his Realm, by new and unlawful inventions, and inordinate covetiſe, againſt the Law of this Realm, have been put to great ſervitude and important charges and exactions, and eſpecially by a new Impoſition called a *Benevolence*, enacteth by the adviſe, *&c.* that the Subjects and Commons of this Land from henceforth ſhall in no wiſe be charged by any ſuch charges, or impoſitions called the *Benevolence*, nor by ſuch like thing.

1 *R.* 3. *c.* 2

But if you will deny, that the King doth in this caſe take the goods of his Sub-

Subject without his assent, then you must other fall upon mine alternative propositi-on, That the Kings Patent hath in this case the power of a Law, to alter property; for how can he recover the imposed by a legal course of proceeding, and by judg-ment in his Court, but upon a title pre-cedent him, before the action brought; which title must be a property in the same imposed? and how commeth he by that property, but by his own Letters Patents, by which he declareth he will have that same as an imposition? For the Judgment giveth not the right, but onely doth ma-nifest and declare it, and giveth execuri-on of it: So in this point the question is, whether the Kings Patent hath the force and power of the Law, or not; for if it be not maintained that it hath, it can never be concluded that he can trans-fer the property of his Subjects goods to himself, without the assent of them; for *quod meum est, sine facto meo alterius fi-eri non potest.* And if you give this power to the Kings Patent, you subject the Law, and take away all rules and bounds of settled government, and leave in the Sub-ject no property of his own, neither do

Bracton, *l.1.c.8.* you by this advance the Kings power and prerogatjve, but you make him no King; for as *Bracton* saith, *Rex est ubi dominatur lex, non voluntas.*

So we see that the power of impoſing, and power of making Laws are *convertibilia & coincidentia*; and whoſoever can do the one, can do the other; And this was the opinion of Sir *John Forteſcue* that reverend and honorable Judge, a very learned profeſſor of the Common Law, and Chief Juſtice of the Kings Bench, in the time of *Henry 6.* His words are theſe in his Book, *De laudibus Legum Angliæ, cap.9. Non poteſt Rex Angliæ ad libitum leges mutare regni ſui; principatus namque nedum regali, ſed & politico ipſe dominatur: Si regali tantum præeſſet iis, leges mutare poſſet; tallagia quoque, & cætera onera imponere, ipſis inconſultis, quale dominium leges civiles indicant, cum dicunt quod principi placuerit, legis habet vigorem; ſed longè aliter poteſt Rex politicis imperans, quia nec leges ipſe ſine ſubditorum aſſenſu mutare poteris, nec ſubjectum populum renitentem onerare peregrinis impoſitionibus.* In which place I muſt interpret unto you, that *peregrinæ impoſitiones* be

Forteſc. *de laudibus Leg. Ang. c.9.*

be not ſtrange and unheard of impoſitions, as was urged by the worthy Gentleman that ſpake laſt; but impoſitions upon traffick into, and out of forain Countries, which is the very thing in queſtion: Further in the thirty ſixth Chapter, he ſaith of the King of *England*, *Neque Rex ibidem per ſe aut miniſtros ſuos tallagia, Subſidia, aut alia quævis onera imponit ligeis ſuis, aut leges eorum mutat, vel novas condit, ſine conceſſione vel aſſenſu totius regni ſui in Parliamento.* So he maketh theſe two powers of making Law, and impoſing to be concomitant in the ſame hand, and that the one of them is not without the other; he giveth the ſame reaſon for this, as we do now, but in other words, becauſe (as he ſaith) in *England* it is *principatus mixtus, & politicus*, the King hath his ſoveraign power in Parliament, aſſiſted and ſtrengthened with the conſent of the whole Kingdom; and therefore theſe powers are to be exerciſed by him only in Parliament. In other Countries they admit the ground of the Civil Law, *quod principi placuerit, legis habet vigorem*; Becauſe they have an abſolute power to make Law, they

Fortesc. *de land. Leg. Ang. cap. 36.*

have also a power to impose, which hath the force of a Law in transferring property. *Philip Comines*, that lived at that time, in his fourth Book, the first Chapter, the fifth Book the eighth Chapter, taketh notice of this policy of *England*, and commends it above all other States, as settled in most security: And further to our purpose laieth this ground, That a King cannot take one penny from his Subjects without their consent, but it is violence. And you may there note the mischiefs that grew to the Kingdom of *France*, by the voluntary impositions first brought in by *Charles* the Seventh, and ever since continued, and encreased to the utter impoverishment of the Common people, and the loss of their free Councel of three Estates: And if this power of imposing were quietly setled in our Kings, considering what the greatest use they make of assembling of Parliaments, which is the supply of money, I do not see any likelihood to hope for often meetings in that kind, because they would provide themselves by that other means. And thus much for my first reason grounded upon the natural consti-

Ph.Com. l.4.cap.1. l.5.cap.8.

tution

tution of the Policy of our Kingdom, and the publike Right of our Nation.

2. For the point of Common Law, which is my ſecond reaſon, it hath been well debated, and nothing left unſpoken that can be ſaid in it; and therefore I will decline to ſpeak of that, which other men have well diſcuſſed, and the rather, for that there is nothing in our Law-book directly, and in point of this matter; neither is the word (*impoſition*) found in them, until the caſe in my L. *Dier.* 1. *Eliz.* 165. for we ſhall finde this buſineſs of an higher ſtrain, and alwaies handled elſewhere, as afterwards ſhall appear: yet I will offer ſome Anſwers to ſuch Objections as have been made on the contrary in point of Common Law, and have not been much ſtood upon by others to be anſwered. Com. Law. Diec. 1. E. 165.

The Objections that have been made are theſe; That from the firſt Book of the Law to the laſt, no man ever read any thing againſt the Kings power of impoſing: No Judgement was ever given againſt it, in any of the Kings Courts at *Weſtminſter*: Other points of Prerogative as high as this, diſputed and debated, his

excess in them limited, as in the book of
42. Ass. p. 9. 42. *Ass. pl.* 5. where the Judges took away a Commission from one that had power given by it to him under the great Seal, to take ones person, and to seise his goods before he was indicted: So Master
1, & 2 E. Dier. 175 *Scrogs* case. 1, & 2. *El Dier.* 175 the power of the King in making a Commission to determine a question of right, depending between two parties notably debated, and ruled against the King, that he could not grant it.

To this I answer, That cases of this nature (of which the question now handled is) have ever been taken to be of that extraordinary consequence, in point of the Common right of the whole Kingdom, that the States would never trust any of the Courts of ordinary Justice with the deciding of them; but assumed the cognisance of them unto the high Court of Parliament, as the fittest place to decide matters so much concerning the whole body of the Kingdom, as 2. *Ed.* 3. 7. it appears that *Ed.* 1. had granted a Charter to the men of Great *Yarmouth*, that all the ships of Merchants, coming to the Port of *Yarmouth*, should land

their

their goods at their Haven, and not at any other Haven at that Port, as at *Garneſton*, and Little *Yarmouth*, which were members of that Port. This was very inconvenient for the Merchants, and a great hurt to Traffick, and therefore the Charter was queſtioned in the time of *Ed.* 2. and adjudged good by the Council: But the parties not contented with this judgment, in the ſecond year of King *E.* 3. by an order in Parliament made upon a Petition there exhibited againſt this Grant, brought a *Scire facias* out of the Chancery returnable in the Kings Bench, to queſtion again the lawfulneſs of the Patent, and in that Suit the cauſe was notably debated, and thoſe Reaſons much inſiſted upon that have been enforced in this caſe; as that of the Kings power in the cuſtody of the Ports: But the matter ſo depending in the ordinary Court of Juſtice, a Writ came out of the Parliament, and did adjourn it thither again, where it gave occaſion of a good Law to be made to prevent the like Grants, and to make them void notwithſtanding any Judgment given upon them, and to make ſuch Judgments alſo void.

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9. E. 3. c. 1. Every Alien and Denizen may carry his Merchandiſe where it pleaſeth him, notwithſtanding any Charter granted, or Judgment thereupon. 16, & 17. R. 2.

The Statute is, 9: *E.* 3. *c.* 1. And in the Parliament Rolls, 2 *H.* 4. *num* 109. we finde a notable Record, which gives warrant for the proceeding in Parliament, in this manner as hath been in this Caſe, notwithſtanding the Judgment in the Exchequer, and declares to the Kingdom, that notwithſtanding the great wonder made by ſome men, nothing hath been done in this bnſineſs by thoſe that ſerve in the Parliament, but in imitation of their worthy Predeceſſors in the like caſe. In the ſecond year of *H.* 4. the Commons ſhew that in the time of *R.* 2. by the means of *John Waltham*, Biſhop of *Saliſbury*, Treaſurer of *England*, wrongfully, without authority of Parliament, and by reaſon of a Judgement given in the Exchequer, 16 & 17. *R.* 2. by the Barons there, againſt certain Merchants of *Briſtol*, and other places, paſſage had been taken for Wines otherwiſe then in ancient times had been, and therefore they prayed, they might pay their priſe Wines in the manner they had uſed to pay, notwithſtanding any Judge-

Judgment given in the Exchequer, or other Ordinance made by the ſaid Treaſurer, contrary to the antient uſage; which Petition the King granted, and the Judgment thereupon became void, and the priſage Wine hath been paid contrary to the Judgment ever ſince.

In 1. *El. Dier.* 165. upon the complaint, made by the Merchants, of the impoſitions ſet upon Cloth by Queen *Mary* by her abſolute power, without aſſent of Parliament; The Cauſe was thought too weighty to be decided in any one Court; but (as it appeareth in the Book) it was referred to all the Judges of *England*, who divers times had conference about it. So it may well be, there is nothing againſt it in our year Books, for there is nothing of it. 1. El. Dier. 265.

Another Objection was this, which was made in the laſt argument, *viz.* That Cuſtom is originally due by the Common Law of *England*; it can then have no other ground or cauſe, but meerly by the Kings royal Prerogative, as a right and duty originally belonging to his Crown: which if it be, it muſt neceſſarily follow he may impoſe, for that is but

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the exercising of that right. To prove this was alleadged the case 39. *E.* 3. 13. by which case it appeareth, that King *John* had a Custom of eight pence on a Tun of Wine in the Port of *Southampton*, but the Book doth not tell you that the King had it by prerogative, and he might have it as well otherwise; as by prescription, or convention, which shall rather be intended, by reason of the certainty of the sum paied; for if it were by prerogative, he might take sometimes more, sometimes less at his will, the right being indefinite, and the quantity limited onely by his own discretion. A common person may have such a custom certain, as 18. *El. Dier.* 352. The Mayor of *London* hath the twentieth part of Salt brought into the City by Aliens, which is a great Imposition, but is good by prescription originally, and hath received greater strength since, by Acts of Parliament made for the confirmation of the Liberties and Customs of the City of *London*. So it appeareth that *John* of *Britain* had Custom of the ships that arrived at his Port of Little *Yarmouth*, worth twenty pounds *per annum*. And

39 E. 3. 13.

18 El. Dier. 352

Dier. 43.

these

theſe inſtances doinefer, that a Cuſtom may be otherwiſe then by prerogative, and therefore it is no good argument to conclude, the King had ſuch a cuſtom, Therefore he had it by Prerogative.

The Book in 30. *H.* 8. *Dier.* 43. was much preſſed on this point, which ſaith that Cuſtom belonged to the King at Common Law, and doth inſtance in Wooll, Wooll-fells, and Leather begun at the Common Law, but abridged by the Statute of 14 *E.* 3. *ca.* 21. *ſtat.* 1. but this appeareth to be a great error, and miſtaking in the Book; for we do finde that that Cuſtom of Woolls, Wooll-fells and Leather was begun by a Grant in Parliament, as appeareth in Statute 15 *E.* 1. *cap.* 7. The words be granted to us by the Commonalty aforeſaid; and the laſt mention before was that the King had granted to the Biſhops, Earls, Barons, and all the Commonalty of the Land, *&c. Novemb.* 3. *Ed.* 1. The Kingrecited in his Letter Patents, That *Prelati, magnates ac tota communitas mercatorum Regni*, granted this new Cuſtom. And ſo the ground and motive of that opinion being falſe, all grounded upon that muſt needs be erroneous.

30 Hen. 8 Dier. 43.

14 Ed. 3. c. 21. ſtat.

If

It was objected, That the King holdeth at this day the encreaſe of four pence in the pound, over due Cuſtom, paid by Merchants Aliens according to the purport of the *Charta mercatoria* 31 *E.* 1. by meer right of Prerogative at the Common Law; for by that Grant of the Merchants he cannot hold it, they being no Body Politick at the time of the Grant; and therefore the Grant is meerly void to binde in ſucceſſion, and yet the Merchants Aliens do pay it at this day.

Rot. char. 31. E. 1. *num.* 42. in Turri.

It is agreed, That by the Common Law a contract with a number not incorporate, bindeth not ſucceſſion; but we muſt take notice, that they by whom that Grant was made, of the augmentation of Cuſtom, by three pence in the pound, and other encreaſes, 31. *E.* 1. were Merchants Aliens, who by the Law of Merchants, and Nations may contract to bind their ſucceſſors in matters of Traffick: For their contracts are not ruled by the Common Law of the Land, but by the Law of Nations, *& per legem Mercatoriam*, as the Book caſe is, 3. *Ed.* 4. 10. and there was a good conſidera-

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tion given them by the King for this encreaſe of Cuſtom: as diſcharge of priſe Wines for two ſhillings the Tun, and other Immunities, which all Merchants Aliens hold and enjoy at this day, by force of that contract made, 31 *E.* 1. For a ſtranger paieth now but two ſhillings the Tun for priſage, whereas it ſtandeth an Engliſhman in much more; ſo as the rule of commutative Juſtice maketh the contract available to the King againſt the Merchants, becauſe he parteth with part of his priſage to the Merchant, and maketh it available to the Merchant againſt the King, becauſe he giveth him encreaſe of Cuſtom above that is due by Law. But the Statute of 27 *E.* 3. *cap.* 26. heretofore cited doth make this point clear without ſcruple, which confirmeth the Charter of 31. *E.* 1. entirely, and by that the encreaſe of Cuſtom by three pence in the pound, which is by name mentioned in the Statute, is now due by Act of Parliament. 27 *E.* 3. *cap.* 26.

If you will have the King hold this encreaſe of Cuſtom by Prerogative, you go directly againſt his meaning; for it appeareth by that which preſently followed

lowed this Grant, that the King took this encreaſe of Cuſtom by way of contract onely, and not by way of Prerogative; for the ſame year following he directeth his Writs to the Officers of his Ports, reciting the contract made with the Aliens by *Charta Mercatoria*, adding further that ſome Denizens were willing to pay the like Cuſtom, upon the ſame Immunities to them to be granted, and doth aſſign his Officers to gather it, but with this clauſe, *Si grauanter & abſque coertione ſolvere voluerint, ita quod aliquem Mercatorum de regno & poteſtate noſtrâ ad præſtationes & cuſtumas hujuſmodi invitum ſolvendas nullatenùs diſtringatis.* Nothing can more plainly expreſs, that the Kings intencion was not to demand this by way of Prerogative, but by force of the contract. If there were ſuch a Prerogative in the Crown, as of right to have Cuſtom, how cometh it to paſs this Prerogative never yet had fruit or effect? for this I can maintain, That the King of *England* hath not one penny Cuſtom or Impoſition upon Merchandizes, elder then the fourth year of Queen *Mary*; that he holdeth not by Act of Parliament,

and

and by the peoples grant: The eldeſt that he hath is that of Woolls, Wooll-fells and Leather, and that is by Act of Parliament, as appeareth in the Statute 25 *E.* 1. *cap.* 7. the Tonnage and Poundage by Parliament in the firſt year of every Kings reign. 25 E. 1. *cap.* 7.

The Aliens encreaſe of Cuſtom by Parliament 27 *E.* 3 *cap.* 26. Then this Prerogative hath been much neglected, that it was never called on to be put in execution, untill now of late years. 27. *E.* 3. *cap* 26.

Concerning the Statutes made for reſtraining our Kings, from the exerciſe of this pretended Prerogative, which is the third matter I ſtand upon: Thoſe that have maintained the Kings Prerogative in this point, have endeavored to interpret thoſe Statutes, to extend onely to reſtrain him from impoſing upon Wooll, Wooll-fells, and Leather, which are ſtaple commodities: And the reaſon they give for this reſtraint more then for other goods, is becauſe the King, by Statute, is reſtrained to a Cuſtom certain for thoſe commodities, as the half Mark a Sack of Wooll, and half a Mark three hundred Wooll-fells and thirteen ſhil- Statute 3

lings four pence a Laſt of Leather; and therefore great reaſon he ſhould not exceed this Cuſtom in theſe Commodities.

This Objection receiveth many Anſwers: Firſt it appeareth both by the expreſs letter of divers of the Laws made in this point, by the occaſion that induced the making of the Laws, and by the execution of them, that all other Wares and Merchandiſes, as well as thoſe of the ſtaple, were within the purpoſe and intent of thoſe Laws: Secondly. The reaſon alleadged why there ſhould be reſtraint for the ſtaple Commodities, rather then for the other, is miſtaken; for the Lords and Commons did grant to *E.1.* by Act of Parliament the cuſtom of the half Mark for Wooll, Wooll-fels, and Leather, which was matter of meer grace and liberality, and includeth no reſtraint in it, but rather a favourable extention, quite contrary to the ſence of the Objection; according to that rule of interpretation, *Gratiola ampliari decet, odioſa reſtringi.* And admit ſome Laws be made expreſly to reſtrain impoſitions upon Wooll, Wooll-fells, and Leather, by reaſon

ſon that the occaſion of making ſuch Laws was the actual impoſing, upon thoſe goods at that time, ſhall we not by good conſtruction, *Secundum mentem extenſivam legis*, extend this Law to other Wares and Merchandizes that are within the ſame miſchief? If we look to the reaſon of the Law, we ſhall make no doubt of it; for that is becauſe the impoſitions were without aſſent of Parliament, not becauſe they were upon ſuch, and ſuch Commodities. Beſides thoſe Laws ſo made are *declarativæ juris antiqui, non introductivæ novi.*

In the enumeration of thoſe Statutes, which I conceive make directly to this purpoſe, I will endeavour rather to anſwer the Objections made againſt them, then to enforce the ſenſe and meaning of them, which is very plain and open, and needs no interpretation. The firſt Statute enforced is, *Mag. Charta cap* 30. made in the ninth year of *H.* 3. by which it is enacted, that all Merchants ſhall have free egreſs and regreſs, out of, and into this Realm, with their goods and merchandizes, to buy, and ſell, *ſine omnibus malis tolnetis per antiquas & rectas*

conſuetudines: In which words we may infer, that both the uſe and right of impoſing are abſolutely excluded, and debarred; for *Conſuetudo*, which in this caſe is to be taken for *Uſage*, which is *mos* (not improperly for *Portorium*, a duty paid in money, as our Engliſh word Cuſtom; in one ſence doth ſignifie) implieth a beginning, and continuance by conſent, and will of the parties, not by power and enforcement, which cannot be a Cuſtom; and therefore it cannot be an Impoſition: for that ariſeth meerly out of the will and power of their impoſer, and is againſt the will of him upon whoſe goods it is ſet: But take *Conſuetudo* either for *Mos* or *Portorium*, the epithites with which it is qualified, *antiquum*, and *rectum*, do deſcribe it to be of that nature, that it cannot be an Impoſition: for *antiquum*, in legal conſtruction, is that which is time out of mind, that is not an Impoſition: for then by continuance of time it ſhould grow a right by preſcription, and were juſtifiable: *Rectum* implieth a limited right, which inferreth there may be a wrong, and exceeding of that right which

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is not in impoſitions: for if there be a right in the King to impoſe, the quantity, time, and other circumſtances are in his diſcretion; the right is illimited: And if he ſet on never ſo great an Impoſition, there is as much right in it, as if it be never ſo ſmall: the exceſs maketh it a burthen, but not a wrong.

We may further obſerve, that in the Statute, *Malum tolnetum*, which is evill Toll, is ſet down by way of antitheſis to *antiqua*, and *recta conſuetudo*; by which is inferred, that exactions upon Wares and Merchandizes, not qualified with theſe two properties of *antiquum* and *rectum*, are evill and unjuſt. This is made more evident by a Record in the Tower of the ſixteenth year of *H.* 3. which was a Mandat ſent by the King to the Cuſtomers of his Ports for the execution of this Law made in 9 *H.* 3. whereby it is commanded, *Quod omnibus Mercatoribus in portum ſuum venientibus cum vinis, & aliis merchandizis, ſcire faciant, quod ſalvò & ſecurè in terram Angliæ veniant cum vinis & merchandizis ſuis, faciendo inde rectas & dubitas conſuetudines,* Rot. claus. 16. H. 3. num.

tudines, nec sibi timeant de malis tolnetis, quæ iis faciat Rex, vel in terrâ suâ fieri permittat. By this record the word *Consuetudo* is interpreted to be *mos*, not *portorium*; otherwise it should have been *solvendo consuetudines*, not *faciendo*. Also these words *antiquum & rectum* in the Statute in this Writ are *rectum & debitum*, which doth more enforce a certainty of right and duty, which by no means can be intended in impositions.

Objections against this Law were made in the last Argument. First, That it was made for Aliens: This is true; the words of the Law do plainly shew it was made for Aliens: But if the State was so careful to provide for them, shall we not judge that with Denizens it was so already? And that this Statute was made to extend that liberty by Act of Parliament to Aliens, which Denizens had by the Common Law, succeeding times did so conceive of it, as appeareth by the Statute of 2. *E.* 3. *cap.* 9. the words are, that all Merchants, Strangers and Princes may go and come with their merchandizes in *England* after the

2. *E.* 3. *cap.* 9.

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tenor of the great Charter, and that Writs be thereupon ſent to all the Sheriffs in *England*, and to Mayors and Bayliffs of good Towns, where need ſhall require.

A ſecond Objection was made in the laſt Argument, out of theſe words of the Statute of *M. Char.* that Merchants might freely traffique, *niſi publicè antea prohibitis fuerint*: by which was enforced, that the King had power to reſtrain and prohibit Traffique; therefore to impoſe. It is agreed, there may be a publick reſtraint of traffique upon reſpects of the common good of the Kingdom; but whether that which is called *publica prohibitio* in the Statute, be intended by the King alone, or by Act of Parliament, is a queſtion: For ſuch reſtraints have ſtill been by Parliament. But admit the King may make a reſtraint of traffique in part for ſome publick reſpect of the Commonwealth, he doth this in point of protection, as truſted by the Commonwealth, to do that which is for the publick good of the Kingdom; but if he uſe this truſt to make a gain and benefit by impoſing,

that is a breach of the truſt, and a ſale of government and protection. But more of this ſhall be hereafter ſpoken in the anſwering of the main Objections.

The next Law is that notable Statute of *E.* 1. in the 25 year of his reign, made upon the very point in queſtion; the words are theſe. And foraſmuch as the moſt part of the Commonalty of this Realm finde themſelves ſore grieved with the male toll of Woolls, that is, to wit, a toll of forty ſhillings for every ſack of Wooll, and have petitioned to us for to releaſe the ſame; We at their requeſt have clearly releaſed it, and have granted for us and our Heirs, that we ſhall not take ſuch things, without their common conſent and good will, ſaving to us and our Heirs the Cuſtoms of Woolls, Skins, and Leather granted before by the Commonalty aforeſaid.

25. *E.* 1. *cap.* 7.

Againſt the application of this Law, to the queſtion now in hand, many Objections were made; ſome out of matter precedent to the Law, ſome out of the Law it ſelf, ſome out of matter ſubſequent and following after the

the Law: For matter precedent; It was objected out of *Thomas Walsingham*, an Historiographer of good credit, that writ of that time when the Statute was made, That in the Petition of grievances given to King *E.*1. by the people in the 25 year of his reign, upon which petition the Statute was made, that they found themselves not grieved in point of right, but in point of excess; the words are, *Communitas sentit se gravatam de vectigali lanarum, quod nimis est onerosum.* viz. *de quolibet sacco* 40 *s.* & *de lanâ fractâ septem marcas*; so they express the cause of their grief, that it was too heavy; which is to be applied to the point of excess, not of right.

*Tho. Walsingham in E.*1. *fo.* 71,72, 73. *edit. per W. Camb. impref. Francof.* 1603.

To this I answer, that if the words had been (*quia est nimis onerosum*) this construction might have been made out of them, because the word (*quia*) had induced a declaration of the cause of that which was formerly affirmed: but the words are (*quod nimis onerosum*) which doth only positively affirm that the imposition, *de facto*, was intolerable for the greatness of it, which doth not therefore admit that it is tolerable, in respect of the right the

King

King had to impose. But this is made clear by the general word precedent in the preamble of the Petition, which doth evidently infer, they grounded their complaint upon point of right, not upon point of excess; the words are these, *Tota terræ communitas sentit se valdè gravatum, quia non tractantur secundum leges & consuetudines terræ, secundum quas tractari antecessores sui solebant habere. sed voluntariè excluduntur.* After which preamble, among the particulars, this of forty shillings upon a sack of Wooll is ranked, but with a dependency of that expressed in the preamble, for the point of right. But seeing we light upon History, which though it be of small authority in a Law argument, yet being the History of our own Realm, hath fit and proper use in the common counsel of the Realm, I will pursue it a little further. Out of *Matth. Westm.* a Writer that lived much nearer the time of the Law made, then *Thomas Walsingham*, he saith, That the Commons by their petitions required, *Ne Rex de cætero tallagia usurparet, & voluntarias super his inductas exactiones de cætero quasi in irritum*

Matth. Westm. fo. 430. Edit. per H. Savile mil. Franco-furti 1601.

tum revocaret; by which it appeareth, that the point of the complaint was, that the exactions laid on them were voluntary, that is, at the Kings will, without assent of Parliament. Out of the Law it self it hath much been pressed, as first the Commons made petition to the King, whereupon they infer out of the nature of the word (petition) that their proceeding was by way of grievance, for the excess and inconvenience, as a matter of grace, not in course of justice for the wrong.

To this I answer, That considering the quality of the parties to this action, it being between the King and the Subject, duty and good manners doth induce gentleness and humility of terms, without blemish or diminution of the force of right. It is according to the demeanor of *Job*, cap. 9. v. 15. *Though I were just, yet would I not answer, but I would make supplication to my Judge.* But in our forms of Law, be the right of the Subject never so clear, manifest, and acknowledged by all; yet if his own be detained from him by the King, he hath no other Writ or Action to recover, but a meer

Job 9.15

a meer petition, *Supplicat Celſitudini, &c.* So as if the word Petition to the King infer defect of right in the Petitioner, there can be no caſe where the King can do the Subject wrong.

A ſecond Objection out of the body of the Law is, that the King doth releaſe that impoſition of forty ſhillings, which implieth a right ſetled in him. But to this I anſwer, That it is no neceſſary inference, whereſoever a releaſe of right is: for it is uſed for claim onely, or where poſſeſſion was, though wrongful, and that *in majorem ſecuritatem, quia abundans cautela non nocet*; but in this caſe, a Releaſe was very expedient, and for ſome reſpect neceſſary, to extinguiſh a right the King had in this impoſition againſt the Merchants themſelves: For this impoſition, though it were not ſet on by aſſent of Parliament, yet was it not ſet on by the Kings abſolute power; but was granted to him by the Merchants themſelves who were to be charged with it: ſo the grievance was the violation of the right of the people, in ſetting it on without their aſſent in Parliament, not the damage that grew by it; for

that

that did onely touch the Merchants, who could not juſtly complain thereof, becauſe it was their own act and grant. This appeareth by two notable Records, the one 22. E. 1. A Writ to the Treaſurer and Barons of the Exchequer in *Ireland*, to diſcharge the Merchants there of impoſitions on Woolls; in which the King reciteth, *Licet in ſubſidium Guerræ Regis pro recuperandâ terrâ Vaſconiæ, mercatores gratanter conceſſerunt per biennium vel triennium, ſi tantum duravit Guerra, de ſacco lanæ, &c.* The other Record is the Writ of publication, that in 26. E. 1. went out after the Statute of 25. in which Writ the King reciteth thus, *Cum nos ad inſtantiam Communitatis Regni noſtri remiſerimus cuſtumam 40 s. nobis nuper in ſubſidium Guerræ noſtræ contra Regem Franciæ conceſſum. &c.* A third Objection made out of the body of the Statute, by thoſe which have argued on the contrary part, was upon theſe words, that the King would take (no ſuch things) without common conſent; by which words they conceived the intention of the Law was limited preciſely to impoſitions ſet upon Wooll, and not on other com-

22. E. 1. *Origen. in Scac. Rem. Theſ.*

In 26. E. 1. mem. Scac. Rem. Theſ.

commodities, which are not such things but other: and for this they alledge this reason, That it was not probable when the complaint was only for an imposition on Wooll, that the King would give a remedy for other things not spoken of, for which there was no cause of complaint.

To this a full answer is given many ways: First, out of the (*Saving*) in the Act, which extends to other things then to Wooll, as to Wooll-fells and Leather, therefore the purview of the Act by these words (such things) extendeth to more then the Wooll; for there needs no *Saving*, but for that which is contained in the purview. Secondly, The reason alledged, that no more by likelihood should be remedied but for Wooll, because onely that was complained of, is false: For the complaint of the Commons was not onely for this imposition on Wooll, but divers other burthens and grievances of the like nature. And this will appear if we compare all the parts of the Law, the one with the other: For this Law is in the form of a Charter written in French, and beginneth, *Edward by the Grace of God, &c.* and is an entire grant,

and

and Inſtrument without Fractions, Sections, and Chapters, as it is now printed, and containeth in it, next before this laſt clauſe concerning the impoſitions on Woolls, which in the printed Book is *Cap.* 6. That the King, for no buſineſs from thenceforth, will take no manner of aids, miſes, nor priſes, but by common aſſent. This word (*miſes*) in French ſignifieth properly impoſitions, derived of the word *mitto*, in Latine (*to put*) ſo the word (*ſuch things*) is a concluſion to all the premiſes, and hath relation not onely to that which is made, *Cap.* 7. by the Printer, and concerneth the male toll of Woolls, but to that precedent which is (all other aids) impoſitions, and takings.

The Writ of publication of this Statute ſent out to all parts in 26. *E.* 1. maketh plain this conſtruction; the words of it are, *Concedentes quod cuſtumam illam vel aliam, ſine voluntate vel communi aſſenſu non capiamus*: Theſe words (*vel aliam*) are indefinite, and extend to any other whatſoever, beſides that of Woolls. The Writ doth further diſcharge Merchants for the commodities of Woollen-

Mem. Scac. in 26. *E.* 1. *Rem. Theſ.*

Woolf-fells and Leather, which are not complained of by name in the Statute; and therefore the Law was intended to other impositions as well as to those upon Woolls.

The Objection made out of matter subsequent to the Statute was this, that notwithstanding this Law of 25 *E.* 1. impositions that before the Statute had been set on other Merchandize then Woolls, were still answered after the Statute; and for instance of this, was alledged, that whereas 16. *E.* 1. an imposition of 40 *s.* the Tun was set upon Wines brought into the Kingdom, an accompt was made of this in the Exchequer in 26 *E.* 1. as by the Records there appeareth; by which it seemeth that the Law of 25. *E.* 1 was not taken to extend to Wines, and such other Commodities, other then Woolls named in the Statute.

16. E. 1. *Orig. R. Thes.*

It is true, such an imposition was set on by *E.* 1. in the sixteenth year of his reign, and an accompt made for it 25 and 26. But it appeareth by the Record of the accompt, that it was made for the time ended before the Statute made. As for the eighteenth of *May*, 16

25, & 26 E. 1. *de compt. T. Mich. R. Thes.*

E. 1

E 1. to 23 *Jul.* 22. *E.* 1. But there is no Record, that ever any accompt was made for any money received for that impoſition for the time after the Statute made; neither was it very willingly anſwered before; for it appeareth by the Record that it was ten years after the ſetting of it.

The third Statute alledged on the behalf of the Subject is that 34. *E.* 1. *c.* 1. the words are theſe, No tallage or aid ſhall be taken or levied by us, or our heirs in our Realm, without the good will and aſſent of our Arch-biſhops, Biſhops, Earls, Barons, Knights, Burgeſſes, and other freemen of the Land. Againſt this was objected, That this Statute was intended onely upon the Taxes and impoſitions of things; The word *Auxilium* makes it clear, that it is to be intended further then of things within the Realm; for *Tallagium* is commonly intended of Domeſtical Taxes, but *Auxilium* is the moſt uſual term for impoſitions upon goods imported and exported, as by the Acts of Parliament by which ſuch impoſitions are given to the King in which they are called moſt commonly by the 34. *E.* 1. *cap.* 1.

name of Aids, as proceeding of good will and benevolence.

5. E. 2. *cap.* 14. *Rot. Ordin.*

The fourth Statute alledged on this part is that of 5. *E.* 2. *c.* 14. juſt in point of the matter in queſtion; and therefore I will ſet it down as I finde it *Verbatim* in the Record in the Tower, *Enſiment novelles cuſtomes ſont levies, & antients enhaunces come ſur levies drapes, vine, aver du pois, & aut choſes purquoy les Merchantes veynont pluis vilement, & meynes de bien, menynont en la terre, & les Merchants eſtrangers demurront pluis longment que ils ſoloyent faier, pur le quel demoure le choſes ſont le pluis enhaunces que ils ne ſoloyent eſtre, al dammage de roy, & de ſon people. Nous ordoxcmus que tout manners de male tolls levies puies de Coronement de Roy Ed. faier de Roy Henry ſoyent entierement ouſtes, & de tout eſtreints put tout jours, nient contriſteant le Chartre que le dict Roy Ed fiſt us Merchants aliens, pur ceo que il fuit fait contra le grand Char. & encountre le Franchiſe de la City de Londres, & ſans aſſent de Baronage, &c. Suvant neque dont al Roy le cuſtome de leynes, peulx, & de quirs, &c. ſi aver les doet.*

By

By this Law is recited That by the levying of new Customs, and by the raising of old, Traffique was destroyed, and all things made dear; And therefore all new Impositions and Customs were discharged *Chartâ Mercatoriâ*, by which Custom that was encreased on Aliens, was taken away, and the reason alledged; Because it was *sans assent de Baronage*, and against the great Charter. And this is further with this clause, Saving to the King his Custom of Wooll, Woollfells and Leather, *Si aver les doit*. Great wars have been raised against the credit of this Law in the Parliament House, and Three things have been especially objected against it:

First, That it is no Law, for it was enforced upon the King, by some of the Nobility that were too strong for him, the Realm being then in tumult and mutiny about the quarrel of *Peirce* of *Gaveston*, so never had the Kings free consent; but he gave way unto it for fear of greater mischeif.

Secondly, That in it self it is unjust, as in taking away the Custom granted to the King by *Charta Mercatoria*, 31.

E. 1. and in making doubt whether the King ſhould have the Cuſtom of Woolls, *&c.* by thoſe words, *Saving it to him, Si aver les dett.*

The third Objection is, That if it were a Law, it is repealed.

To theſe I give particular Anſwers.

To the firſt: That this Statute was made both at the inſtance of the King and people, with a purpoſe and intention on all parts to ſettle things in a ſtay and order, both in the Kings houſe and Commonwealth, the King and his Nobles ſtanding in good terms, when this buſineſs was taken in hand; and it was begun and ended with great ſolemnity and ceremony: For the King in the third year of his reign gave Commiſſion under his Great Seal to 32. Lords ſpiritual and temporal; of which there were eleven Biſhops, eight Earls and thirteen Barons; they being as Committees of the higher Houſe to deviſe Ordinances for the good government of his houſe and his Realm. In which Commiſſion he doth for the honor of God, the good of him, and

Com. 16. *Mar.* 3. *E.* 2. *Rot. ordin.* 5. *E.* 2.

and of his Realm, of his freewill grant to the Prelates, Earls, and Barons, and others elected by the whole Kingdom, full power to ordain the State of his houſe and Realm by ſuch Ordinances as by them ſhould be made, to the honor of God, the honor and profit of holy Church, the honor of himſelf, the profit of him and his people, according to right and reaſon, and the oath he made at his Coronation.

Theſe joyning with others of diſcreet Commons in Parliament, and taking every of them a ſolemn oath for their ſincere demeanor in the buſineſs, did make this and other Ordinances, which were ſo well liked of by the King, that after they were made, he took an oath to obſerve them, and cauſed them to be publiſhed in *Pauls* Church-yard by the Biſhop of *Salisbury*, by denouncing Excommunication againſt all that ſhould wilfully infringe them: And by his Letters Patents dated 5. *Oct.* 5. *regni ſui.* did ſend them through the Realm to be publiſhed, and from thenceforth to be obſerved, thereby ſignifying his great liking and approbation of them; after which

Pullic. 3. *Kal. Oct.* 5. E. 2. *R t. ord. Pat.* 5. *Oct.* 5. E. 2. *Rot. ordin.*

they had the force and power of Laws given unto them in the Parliament, in the fifth year of his reign.

The second Objection, which is the injustness of the Law, instanced in two points; The taking away of *Charta Mercatoria*, and the doubting of the Kings right to the Custom of Woollfells, and Leather, &c. To the first of these, I deny it to be unjust, but to be according to the Law of *England*, and liberty of the Kingdom: for that Charter did contain in it divers grants of things which were not in the power of the King to grant without assent of Parliament; the trial *per medietatem linguæ*, and other things tending to the alteration of the Law, and burdening of the people; and therefore that Charter never had his undoubted and setled force, until it was confirmed by Act of Parliament, but lay asleep almost twenty years together, without being put in execution, between 5, *E.* 2. and 27. *E.* 3. when it was confirmed; for the doubt that is supposed to be made in the Statute of the Kings right to the Custom of Wooll, Woollfells and Leather, I take it, there is no such doubt made:

made: For the words (*Saving the Kings right to the Custom of Woolls, si aver les dont*) have this construction, that is, at such times as he ought to have it: so the word (*si*) hath the signification of (*quando*) for it had been a folly to have made a Saving of that, of the right whereof they had doubted, neither is it likely but that they would have taken it away, if it had not been lawful; but there was no colour to doubt of the right of it, for it was given by Act of Parliament, and ever continued in force without challenge or exceptions to the lawfulness of it.

The third Objection is, That this Statute is repealed: To this I plead, *Nullum valet recordum.* If it be repealed, it must be by Act of Parliament, for *unum quæque dissolvitur iisdem modis quibus est colligatum:* I and others have searched the Records of the Realm, and endevoured by all means to inform our selves of the truth herein, & we can find no Act of Parliament of repeal: The truth is, some Kings finding these Laws not to sort to their wills and humors, have endeavoured to suppress them, but they did never yet ob-

tain a repeal of them by Act of Parliament.

But it is further urged, That although there were no formal repeal of the Law, yet it was never put in execution as a Law, but even presently upon the making was rejected, and use and practise went quite against it: and for instance hereof, a Record was vouched that *E.* 2 held himself so little bound by it, as that in the 11. year of his reign he set an Imposition without assent of Parliament upon Wooll, Wooll-fells, Leather, Wines, Cloth *Aver de pois*, and divers other kind of Merchandizes. To this I answer, that if it were true, that a distinct and impotent King, as he was, did contrary to the Law, doth this make the Law void, and no Law? But if we look into the whole Record, and scan this action of *E.* 2. from the beginning of it unto the end, we shall finde it a very good instance to prove the practice and execution both of this Law of 5. *E.* 2: and of that in 25. *E* 1. for it is true that *E.* 2. in the eleventh year of his reign did borrow of the Merchants a certain sum of money above the due Custom of Woolls, Wooll-fells, Wine, *Aver de pois*, Leather, and such other goods imported

and

and exported; but it appeareth by the Record, he took it but for one year; he took it by the advice and counsel of the Merchants, and he took it *per viam mutui*, as a loan. The direction of the Writ is, *Collectoribus mutui nobis per mercatores alienigenas & indigenas de certis rebus & Merchandisis usque ad certum tempus faciendi.* This was done in good terms, he did not claim it as his right, but did borrow it, which I do think is a good evidence against his right: But what became of this? the State would not abide it, for all these fair shews. And therefore afterwards the King sendeth out other Writs by which he discharged all Merchandizes of this Loan, saving only Wooll, Wooll-fells, and Leather; and for the Loan taken upon those Commodities, it was limited to continue but until *Michaelmas* after, and good security was given to the Merchants by the Customers to pay themselves by way of defalcation out of the Customs which should be due after *Machaelmas*, those sums which were so borrowed of them. The words of the Record are worth the observing, *Cum pro expeditione guerræ Scotiæ,*

Rot. claus. 11. E. 2.

Rot. finium 11. E. 2.

tia, & aliis arduis & urgentibus neceſſi-tatibus nobis multipliciter incumbentibus, pro quarum exoneratione quaſi infinitam pecuniam refundere oportebit. pecunia plurimum indigeamus in præſenti, & nuper pro eo quod exitus regni & terrarum noſtrarum ſimul cum pecunia nobis in ſubventione præmiſſorum tam per Clerum quam Communitatem regni noſtri conceſſa ad ſumptus prædictos cum feſtinatione qua expediret faciendos, non ſufficiunt, exquirentes vias & modos quibus poſſemus pecuniam habere commodius & decentius pro præmiſſis, de conſilio & adviſamento quorundam mercatorum tam alienigenarum quam indigenarum viam invenimus infra ſcript. viz. And ſo ſetteth down the manner of the loan, and the ſecurity for the payment of it: This (I take it) was neither an Impoſition nor a wrong in any reſpect. Alſo by the firſt Record it appeareth, that the Loan ſet on Wines, *Averdepois*, and ſuch other Commodities, beſides Wooll, Woll-fells and Leather, were preſently diſcharged by *E* 2. which ſheweth they were taken to be within the intent of the Statute of 25 *E.*1.

The fifth Statute alledged on the behalf

of

of the Subject is that 14. *E.* 3. *Stat* 1. *c.* 21. by which the Commons pray the King to take no more then the old Custom of the half Mark. The King prayeth aid of the Commons for a time above the Custom upon his necessity of Wars. And the conclusion is, that by that Act the King doth grant that after the Feast of Pentecost, twelve moneths following, he will take no more of Woolls, Wooll-fells and Leather, but the old Custom, and doth promise to charge, set, or assess upon the Custom but in manner as aforesaid. 14. E. 3. *Stat.* 1. *cap.* 21.

The sixth Statute is 14. *E.* 3. *Stat* 2. *cap.* 1. The King doth grant by way of Charter to the Prelats, Earls, Barons, Commons, Citizens, Burgesses and Merchants, that they be not from henceforth charged nor grieved to make any aid or sustain charge, if it be not by the common consent of the Prelates, Earls, Barons, and other great men, and Commons of the Realm, and that in Parliament. 14. E. 3. *stat.* 2. *c.* 1

These two Statutes grew upon an occasion of an Impo'ition set on Wooll by the King without assent of Parliament: Little hath been objected against them, but only to the first, that it was obtained of grace,

and

and not upon inſtance of right, which they gather out of the words of the Law, which are, The Commons pray the King that he would ſtabliſh, that from hence-forth no more then the old Cuſtom be taken. The like reaſon may be made againſt the King out of the ſame words in the ſame Law: for the King in the ſame Act prayeth the Commons to give him an Impoſition upon Woolls for a time above the old Cuſtom: but the Record of the Petitions exhibited in Parliament, on which theſe two Laws are made, cleareth the objection.

Rot. Par. 13. E. 3. num. 5. The firſt was delivered by the Lords in this form, *Les grands volunt*, that the male toll ſet on Woolls newly, be altogether abated, and that the old Cuſtom be held, and that they may have this in point of Charter, and by inrolment in Parliament. This word (*volunt*) had been too high for a ſuit of grace, and therefore muſt be intended of right. The Commons Petition in form is ſomewhat humble, but in effect and purpoſe is rough and ſtern: The words are theſe, The Commons pray that the male toll of Woolls be taken as it was uſed in antient time, which is now enhanced without the aſſent of the Com-

Rot. Par. 13. E. 3. num. 13.

mons

mons, and (*grandes*) as we conceive, and that if it be otherwise demanded, that every one of the Commons may arrest them without being challenged. According to these Petitions, the first of these two Laws is by inrolment in Parliament: the second is in form of a Charter; the first doth express some special commodities: The second doth reach generally at all.

The seventh Law directly touching this point, is that 14. *E.* 3. *Stat.* 2. The King doth grant according to the Great Charter, that all Merchants, Denizens and foreigners may without let safely come into the Realm of *England* with their goods and Merchandizes, and safely tarry, and safely return, paying the Subsides, Customs and other profits reasonably due. Upon the words of this Law, was great advantage taken, in this, that besides Custom and Subsidy, which comprehend all the certain and ordinary duties the King hath upon the wares and goods of Merchants, there are other profits spoken of to be due: These they affirm cannot be understood but of Impositions by the King without assent of Parliament. 13. *E.* 3. *cap.* 1. *stat.* 2. *c.* 2

To this I answer; if they were not du-

ties

ties due to the King beſides Cuſtom and Subſidy, which might ſatisfie the intention of theſe words, this objection might have had ſome colour in it; but it is plain that beſides theſe two, there are other profits due to the King upon Merchants goods, as Scavage, Tonage, and the like.

Rot. Par. 50. *E.* 3. *nu.* 163. And you ſhall finde a Petition in Parliament, 50. *E.* 3. againſt the raiſing of theſe above the old rate.

15. *E.* 3. *ſtat.* 2. *c.* 5 The eighth Law is, *E.* 3. *Stat.* 2. *cap.* 5. whereby it is enacted that every Merchant may freely buy and ſell, and paſs the Sea with their Merchandizes of Wooll and all other things, paying the Cuſtom of old time uſed, according to the Statute made in the laſt Parliament in Midlent, which was the *Stat.* 14. *E.* 3. *ſtat.* 2. *cap.* 2. This Law doth expreſly exclude the novelty of Impoſitions.

18 E. 3. *ſtat.* 1. *c.* 3 The ninth Law is that 18. *E.* 3. *ſtat.* 1. *ca.* 3. whereby it is enacted, That the Sea be open to all manner of Merchants to paſs with their Merchandizes where it ſhall pleaſe them.

27. *E.* 3. *ſtat.* 2. *c.* 2 The tenth is, 27. *E.* 3. *ſtat.* 2, *cap.* 2 for the aſſurance of Merchants-ſtrangers and other,

ther, the King doth will and grant for him and his Heirs, that nothing ſhall be taken over the due Cuſtoms, not taken of them to his uſe by colour of ſuit, or in other manner againſt their wills.

The eleventh is, 38 *E.*3.*cap.*2. that all manner of Merchants aliens and Denizens may bny and ſell all manner of merchandizes, and freely carry them out of theRealm, paying the Cuſtoms and Subſidies thereof due. 38. *E.* 3. *cap.*2.

The laſt is 22. *H* 8. *cap.*8. by which it was enacted that Tables ſhould be ſet up in Ports, by which the certainty and very duty of every Cuſtom, Toll, and Duty, or ſum of money to be demanded and required of Wares and Merchandizes ſhall and may plainly appear and be declared, to the intent that nothing be exacted otherwiſe then in old time hath been uſed and accuſtomed. 22.*H.*8. *cap.*8.

By this late Law it appeareth that the judgment of the whole Parliament was at that time, That nothing was due upon Wares and Merchandizes, but that which which was certain, and had been antiently due, by which Impoſitions are excluded, whoſe qualities are novelty

ty and incertainty, as being set on as present occasion moveth, and proportioned for quantity and other circumstances, as the will of the King directeth.

These are the Laws which I conceive most directly tend to the restraining the Kings of *England* from the exercise of that irregular power of imposing, at the first offered by them to be put in execution, yet not pressed as their right, and never practised but upon opposition of the whole State, and at last deserted and given over until of late; as by that which followeth in the fourth place will appear.

Custom 4 My fourth and last assertion is, That this practise of imposing without assent of Parliament, is *contra morem Majorum*. In this I will make an historical perlustration of the times past, whereby I will discover and make known what passages have been in this business in this Kingdom, and especially in the high Court of Parliament for the space of 300 years and more last past, since the beginning of the reign of *E.* 1 sithence which time, and not before, this Kingdom hath grown into the

the glory and reputation of foraigne traffique. And as a worthy Gentleman of the Kings learned Councel, made certaine considerations upon this question, framed and strengthened out of the greatnes of his wit and reason: so I grounding my self upon the practice of former times, which is the safest rule whereby to square the right both of King and people in this Common-wealth, where their right is *jus consuetudinarium*, a right that groweth by use and practice, I will propose unto you certaine observations out of the action and experience of former times untill the raignes of the two late Queenes; by which you may the better ground and frame your judgements in the determination of the right in this question.

My first observation is in point of circumstance, that there never was any Imposition set, but in time of actuall war, and *duplicatis vexillis*: they were set on very rarely and sparingly, but for a short time, and that certaine and definite, and upon some few commodities, and that by the assent of the Merchants that were to beare the burthen. In our

time the occasion not so sensible, the continuance to be perpetual, the number many hundreds, almost no kinde of Commodity spared. I will give you some few Instances of these circumstances out of the Records themselves.

22. E. 1. orig. Scacc. Rent. Thes.

22. E. 1. mem. Scac. R. Thes. T. Mich. Rot. parl. 17.

The maletole of Wooll set on by King *E.* 1. which gave the occasion of the Stat. 25. yeare of his raigne, was given by Merchants. The Record saith, *Mercatores gratanter concesserunt in subsidium guerræ Regis.* It further sheweth, it was for his necessity of Warre, which then was great also.

E. 3. an. 28.

For the time of *E.* 3. there need not many instances; for his whole raigne was almost an actuall warfare; As in the first year of his raigne for his war in *Scotland* and *Ireland*. In the thirteenth year of his raigne for his war in *France*, severall Impositions were set on

Rot. parl. 50.

In the seventeenth year of *E.* 3. the Record in the Tower mentioneth that forty shillings Imposition was upon a sacke of Wooll by the grant of Merchants, and it was in the time of VVar.

E. 3. an. 18.

In the twentieth yeare of King *E.* 3. it appeareth in the Record, that the Imposition

position then put upon VVools, was by the assent of Merchants for two years, for the necessity the King had in his passage over the sea, to recover his right, and to defend the Realme.

My second observation is, Never any Imposition was set on by the King out of Parliament, but complaint was made of it in Parliament; and not one that ever stood after such complaint made, but remedy was afforded for it; *Et quod Rex inconsulto fecit, consulto revocavit.* his Soveraigne power controlled his subordinate. In which it is a thing very notable, that the King in no one Case ever claimed, or so much as ever named his right or prerogative, which no doubt would have been done, if it had been thought due, but gave satisfaction to the complaint by one of these three waies; Either by discharging them quite, and making some good Law against them.

Secondly, by intreating the people to hold them some short time by their favor.

Thirdly, by waving his present possession, and taking that of their gift by Act

of Parliament, as an aide which he had set on by his absolute power as an Imposition.

25. E. 1. ca. 7. Rot. parl. 38. E. 3. n. 26. 38. E. 3. cap. 2. 45. E. 3. cap. 4. 18. E. 3. cap. 10, 11. R. 18. E. 3. cap. 3. l. 1. 21. E. 3. n. 11. R. Parl. 25. E. 3. n. 22. rot. Parl.

Instances of the first 25. *E.* 1. the Impositions of Wools taken off, and a Law made against it, and the King undertook for him and his successors to doe so no more: 38 *E.* 3. 26. the Imposition of three shillings foure pence on a sacke of Wooll put off upon complaint, and a Law made against it, 38 *E.* 3. *ca.* 2. the like Statute 45 *E.* 3. *c.* 4. upon a complaint of an Imposition on Wools made in Parliament, 45. *E.* 3. *n.* 42. *Rot. Parl.*

Instances of the second 21. *E.* 3. *nu.* 11. a petition upon an Imposition of 2. s. upon a sacke of Wool, 2. s upon a tunne of VVine, and six pence upon *averdupois*, all discharged presently, saving the two shillings upon a sacke of Wool, and for that intreated that it might stay till Easter following, and so it did, and was then taken away.

Instance of the third 25 *E.* 3. *nu.* 22. the Commons made petition against an imposition of fourty shillings upon a sack of Wool granted to the King by the Merchants, shewing that they ought not to

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be bound by their act. The King did not claime right or justice, but because his warres were great, upon his request had it granted unto him for two yeeres by Act of Parliament, aud pretended no title of Prerogative, neither was it ever spoken of.

My third observation is that our Kings have acknowledged that it is not their right. *E.* 1 in his Writs he sent to the Officers of his parts to levie three pence on the pound over the old custome, of the Denizons as well as of the Aliens, and to suffer the Denizons to enjoy those privileges the Aliens did enjoy by the payment of the encrease of Custome, doth give this direction expressly. That they should not take it of Denizons against their will. The words of the Record express it very fully, *Cum mercatores extranei & alienigenæ pro quibusdam libertatibus eis per nos concessis & priscis nostris quibuscunque remissis, nobis de bonis & merchandisis suis quibuscunque infra regnum & potestatem nostram adducend. ultra antiquas custumas dare concesserint prestationes & custumas subscriptas, viz.* and so setteth down the increases, and amongst

Orig. in Scau. 31. E. 1. R. Thes.

the rest this three pence upon the pound, and so proceedeth, *Ac quidam mercatores de regno nostro & potestate nostra, ut ipsis dictis libertatibus & immunitatibus uti & gaudere, & quod de prisis nostris quieti esse possint, prestationes & custumas hujusmodi de bonis & merchandisis suis nobis solvere velint, ut accepimus, assignavimus vos, &c. ad custumas & prestationis predictas de mercatoribus de regno & potestate nostra colligend. qui eas gratanter & sine coercione solvere voluerint. Ita tamen quod aliquem mercatorem de dicto regno & potestate nostra ad prestationes & custumas hujusmodi nobis invito solvend. nullatenus distringatis.* Surely if *E.* 1. had claimed the prerogative of imposing, he would never have given these cautions in the requiring of that which he had taken to be his due, as that they should not exact it of any of his subjects that were not willing to pay it, nor trouble nor distraine them for it.

In the twelfth yeere of *E.* 3. we finde the Record of certaine letters written from the King being then at *Barwick* in the Scottish Warres, unto the Archbishop of *Canterburie*, in which letters

Rot. Alem. 12. E. 3. dorm. 21. in turr.

the

the King ſeemeth to have a great confidence in the devotion of the Archbiſhop, and therefore earneſtly intreateth him to further his enterpriſes with his prayers to God, and then addeth further;

Ad hoc pater, cum populus regni noſtri variis oneribus, tallagiis & impoſitionibus hactenus prægravetur (quod dolenter referimus) ſed inevitabili neceſſitate compulſi de eiſdem oneribus ipſum adhuc relevare non valemus dictum populum, ut tantam neceſſitatem noſtram humiliter & benigne patiatur & caritativè ſuſtineat, & priorem (quam penes nos concepit de cetero inſtanter in orationibus & eleemoſynis ſuis, oneribus prædictis, quæ non ex malitia vel preſumptione voluntaria ipſum gravant, non obſtantibus) exhibeant caritatem, indulgentiam muneribus & aliis modis, quibus ſecundum Deum videbitis piis exhortationibus inducatis, & nos penes eundem excuſetis; ſperamus namque per Dei gratiam, cujus manus cunctis indigentibus ſola ſufficiens, & largiſſima comprobatur, beneficiis compenſatius dictum populum viſitare & conſolari pro loco & tempore opportunis.

The principall thing I note out of this Record upon the very point of this my third observation, is, that the King intending to excuse himself of the burthens by him laid on the people, and to avoid the blemish of wrong and injustice in laying thereon, saith they were not *onera ex presumptione voluntaria*, that is, burthens that he presumed to lay on at his owne will, whereby he condemneth impositions without assent of Parliament, which are (*onera ex voluntate Regis*) to proceed of presumption, which doth clearly exclude clame of right, and disproveth the lawfulnes of the Act. But there are divers other notable passages in the Record worthy our marking; As out of the word (*pragravantur*) used by the King wee may gather hee did accompt these Impositions a grievous burden to his people, which sheweth his owne pity of them. He saith further, *Dolentes referimus*, shewing his griefe and remorse at it, *& inevitabili necessitate compulsi*, he did it constrained by unavoidable necessity, shewing he was forced to it against his will, by that which violateth and breaketh all law which

inferreth,

interreth, he would not maintaine his action by law; *Adhuc relevare non valemus*; this insinuates, he would ease them in good time; *caritatem exhiberent*, they should afford him charity in the bearing of them, as if so be in point of justice or right they need not, *Penes eundem excusetis*, the Bishop should excuse him to the people. By this he did clearly leave the point of justification and so of right: lastly he promiseth he would visit and comfort them *beneficiis compensativis*, would give them recompence for those summes he had so raised of them; which sheweth that he claimed them not as due, for then he needed not give recompence for them.

In the one and twentieth yeere of *E.* 3. a petition was exhibited in Parliament, that Levies be not made by Commission (so they be in this case) nor other things laid upon the people unless they be granted in Parliament. The Kings answer is, If any such impositions were made, it was by great necessity, and with assent of the Prelates, Barons, and some of the Commons present; yet he will not that such Impositions not duly made be drawne in *Rot. Parl 21. E. 3. n. 16.*

inconſequence. Here the King acknowledgeth an Impoſition not to be duly made, though with the conſent of the Higher Houſe, and ſome of the Commons, becauſe it was not in full Parliament: much rather he would have thought ſo, if it had been by the King alone.

King *E.* 4. (that was a rough and warlike Prince, and was more beholding to his ſword in the recovery of his right to the Crowne then to the affection of the people) at a Parliament held the ſeventh yeere of his reigne made a Speech to the Commons, Sir *John Say* being then Speaker, in which Speech is contained very notable matter, and very pertinent to our purpoſe; and becauſe the Record is not in print, I will ſet downe the Kings Speech *verbatim* as it is entred upon the Parliament roll, and then I will make a paraphraſe upon it;

Rot. parl. 7. E. 4. The Record begins, *Memorandum quod die veneris 3. die Parl.*

John Say, and ye Sirs come to this my Court of Parliament for the Commons of this my Realme; The cauſe why I have cald and ſummoned this my preſent Parliament, is, that I purpoſe to live upon mine own, and not to charge my ſubjects

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but in great and urgent cauſes, concerning more the VVeale of themſelves, and alſo the defence of them and of this my Realme, rather than mine owne pleaſure, as heretofore by Commons of this Land hath beene done, and borne unto my progenitors in time of need; wherein I truſt that yee Sirs, and all the Commons of this my Land will be as tender and kinde unto me in ſuch caſes as heretofore any Commons have been to any of my progenitours. And for the good will, kindneſs, and true hearts that yee have borne, continued, and ſhewed to me at all times heretofore, I thanke you as heartily as I can: alſo I truſt yee will continue in time coming; for which by the grace of God I ſhall be to you as good and gracious a King, and reigne as righteouſly upon you as ever did any of my progenitors upon Commons of this my Realme in dayes paſt, and ſhall alſo in time of need apply my perſon for the VVeale and defence of you, and of this my Realme, not ſparing my body nor life for any jeopardy that might happen to the ſame.

Out

Out of this we may obſerve firſt the Kings Proteſtation to live of his owne, and not to charge his ſubjects; by which I gather he did acknowledge a certain and diſtinct property of that which may his ſubjects from that which was his own, which excludeth the right to impoſe at his will; for if that be admitted, the ſubjects property is *proprietas precaria*, not certaine how much of his is his owne: for that is his which the King will leave him; for there is no limit or reſtraint of the quantity, the right being admitted, but onely the Kings will.

The ſecond thing I obſerve is this, that in charging of his ſubjects he would confine himſelfe between theſe two bounds, the one, it ſhould bee in great and urgent cauſes concerning more the Weale of them, and the defence of them and his Realme, than his owne pleaſure, wherein he condemneth thoſe occaſions that grew upon exceſſe of private expence by over great bounty, or otherwiſe, and admitteth onely ſuch as grow by reaſon of warres, or other ſuch like publique cauſes concerning the whole

State:

state: the other bound or limit is, that those burdens should be *secundum morem majorum*, as heretofore had been done and borne by the Commons to his ancestours in time of need.

The third thing I observe is, that he acknowledged these burdens did proceed out of their good will and kindness, and not out of his right and prerogative; out of these words, that he trusted they would bee as tender and kinde to him in such cases as heretofore any Commons had been to his Progenitors: And lastly wee may note the recompence promised by the King to his subjects, for their good wills and kindness, his goodness and grace, his just and righteous government, the jeopardy of his body and life for their Weale and defence. Did this King assume to himselfe a right to lay burdens on his subjects at his own will without their assents, that offered to buy them at his need with the price of his blood, the most sacred relique in the kingdome?

My fourth observation is that in all petitions exhibited by the Commons

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in Parliament, against Impositions, the very knot of their griefe and the principal cause of their complaint hath been expressed in those petitions, that the impositions have been without assent of Parliament: by which is necessarily inferred, that their griefe was in point of right, not of burden.

Rot. parl. 21. E. 3 nu. 11. In 11. *E* 3. *nu.* 11 the complaint of the Imposition of two shillings upon a sacke of Wooll, two shillings upon a Tonne of Wine, six pence upon *aver de pois*, the cause of grievance expressed because it was done *Sans assent de Commons.*

R. Parl. 25, E. 3. n. 22. 25 *E.* 3. *n.* 22. In a petition the Commons complaine that an imposition upon Wools was set by the consent of the merchants; they pray that Commissions bee not made upon such singular grants, if they be not in full Parliament; and if any such grants be made, they may he held as void.

R. Parl. 17. E. 3. n. 28 17 *E* 3. *n.* 28. The Commons in their petition informe the King, it is against reason they should be charged with impositions set on by assent of Merchants, and not in Parliament.

My

My fifth obſervation is, that whenſoever any petition was exhibited againſt impoſitions, there was never any reſpect had of the quantity, but they were ever intirely abated, as well where they were ſmall, as where they were great; no requeſt ever made to make them leſs when they were great, nor excuſe made of their eaſe when they were exceeding ſmall; which ſheweth that it was not the point of burden or exceſſe was reſpected in their complaint, but the point of meere right.

25 *E.* 3. *nu.* 22. Fourty ſhilling ſet an impoſition upon a ſacke of Wooll, upon complaint, all taken off, and no ſuit to be eaſed of part becauſe it was too great. *R. Parl.* 25. E. 3. *nu.* 22.

36. *E.* 3. *nu.* 26: Three ſhillings and four pence upon a ſacke of VVool, all taken off, and no excuſe made for the ſmalneſs; for 21 *E.* 2. *nu.* 11 two ſhillings a ſacke, two ſhillings tonnage, and ſix pence poundage. *ibid.* 38. E. 3 *n.* 26 21. E. 3. *n.* 11.

50 *E.* 3. *nu.* 163. A great complaint was made in Parliament by the Commons that an impoſition of a penny *R. Parl.* 50. E. 3. *nu.* 163.

was

was set upon wools for Tonage over and above the ancient due which was but a penny, and so the subject was charged with two pence.

Also that a penny was exacted for Mesonage, which was but an halfe penny; which Impositions the Record doth expres did amount to an hundred pounds a yeere.

This petty imposition was as much stood upon in point of right, as the other great one of fourty shillings, and was taken off upon complaint in Parliament, without either justification or excuse for the smalnes of it.

My sixth observation is, that those which have advised the setting on of impositions without assent of Parliament, have been accused in Parliament forgiving that advice, as of a great offence in the State, and have suffered sharpe censure and great disgrace by it.

Neither doe I finde that the quality of the person hath extenuated the blame, as 50. *E.* 3 *William L. Latimer* Chamberlaine to the King, and one of his private Councell, was accused by the Commons in Parliament of divers deceits

deceits and extortions and misdeeds; and among other things, that he had procured to be set upon Wooll, Wooll-fells and other Merchandizes, new Impositions, to wit, upon a sack of Wool eleven shillings; which the L. *Latimer* sought to excuse, because he had the consent and good liking of the Merchants first: But judgment was given against him that he should be committed to prison, be fined and ransomed at the Kings will, and be put from being of the Council; and this procuring of Impositions to be set on without assent of Parliament is expresly set down in the entry of the judgment for one of the causes of his censure.

Richard Lyons a Farmer of the Customs in *London* the same year was accused in Parliament for the same offence; he pleaded, he did it by the Kings command, and had answered the money to the Kings Chamber: Yet was condemned and adjudged in Parliament to be committed to Prison, and all his Lands and Goods were seised into the Kings hand; and at the last the hate against these authors of Impositions grew so that 50. *E.* 3. in the same Parliament, a petition

Rot. Par. 50. E. 3. *n.* 17, 18. 19, 20.

tion was exhibited in Parliament to make this a capital offence; The Record is very short, and therefore I will set it down *verbatim*. *Item prie le dit Commun que soit ordaine per Statute en cest present Parliament de touts ceux queux dy en avant mettront ou font pur lour singuler profit novels Impositions per lour authoritie demesn accroucheants al eux eny al power de riens que soit establi en Parliament, sans assent de Parliament. que ils eyent judgement de vie & member, & de forisfacture.* To this rough Petition the King gave a milde and temperate Answer, *Comme la Commun ley tume estoit al avant use.*

My seventh Observation is, the cessation between 50. *E.* 3. after this censure in Parliament, and 4. *Marie* almost two hundred years, during which time no King did attempt to impose without assent of Parliament: And yet we finde in the Parliament Rolls, that there was not one of those Kings that reigned in that time, but had Impositions granted him upon sit occasion by Act of Parliament upon all Goods and Merchandises, and at divers times during their reigns, some-

ſometimes more, ſometimes leſs upon the Ton and pound, but ever for a time certain, and indefinite; ſo the uſe of them was not given over, but the power of Impoſing was ſo clearly and undoubtedly held to be in the Parliament, as no King went about to practice the contrary.

But to this ceſſation that was of great weight and credit in our evidence, a colour was given by the other ſide to avert the inference made upon it, againſt the Kings right, that is, that during that time there was ſo great a Revenue grew to the Crown by double Cuſtom paid for all Merchandizes both in *England* and at *Callis*, by reaſon of an Act of Parliament made 8. *H.* 4. which was, that no goods ſhould be carried out of the Realm but to *Callis*, and by reaſon that the Merchants paid Cuſtom both there and here for the ſame goods, that in the ſeven and twentieth year of *Henry* the ſixth, the Cuſtom of *Callis* was 68000. pounds the year, a great ſum, if you conſider the weight of money then, what price it bare, and by reaſon hereof Princes not delighting to charge their murmuring Subjects but when need is, being ſo amply ſupplied

otherwiſe, did not put that Prerogative in practice. To this I Anſwer, That if that were true that was urged, it might be ſome probable colour of the forbearance of impoſing; but I finde it quite contrary, and that by Record: For there was no ſuch reſtraint of all Commodities not to be tranſported to any place bnt *Gallis*, but onely Woolls, Woolfells, Leather, Tinn, and Lead. that were ſtaple Wares, which by the Statute, 37, *E.*3. were to be tranſported thither, and not to any other place, and the ſtaple continued at that place for the moſt part from that time untill long after, 27. *H.* 6. but there was no double Cuſtom paid both here and there by the ſame owner: bnt the yearly profits of the Cuſtoms of *Callais* at thoſe times were ſo far ſhort of that which hath been alledged in 27. *H.*6. that it appeareth in an Act of Parliament, 27. *H.* 6. *cap.* 2 printed in the book at large, That the Commons do complain, That whereas in the time of *E.* 3. the Cuſtom of *Callais* was 68000 pounds *per annum*, at that time, which was 27. *H.* 6. by reaſon of the ill uſage of Merchants, it was fallen to be but

27. *H.*6. *cap.*2.

12000

12000 pounds the year; ſo then there was great cauſe in that reſpect to have ſet on Impoſitions by reaſon of that great abatement of Cuſtoms, and yet it was not then offered to be done without aſſent of Parliament. But if you look a little further into the extreme neceſſities of thoſe times, you ſhall finde there never was greater cauſe to have ſtrained Prerogatives; for it appeareth in an Act of Parliament 28. *H.* 6. that it was then declared in Parliament by the Chancellor and Treaſurer, who demanded relief of the people for the King, both for payment of his debts, and for his yearly livelioood, that the King was then indebted 372000. pounds, which now by the weight of money amounteth to above 1100000. pounds, and that his ordinary expences were more then his yearly revenue by 19000. pounds yearly: ſo if ever there was cauſe to put a King to his ſhifts, it was then; yet we ſee they did not venture to put in practice this ſuppoſed Prerogative. It further appeareth in that Statute that the people among thoſe reaſons they alleadged why they were not able to retain the King,

gave this for one, that they had so often granted him Tonnage and Poundage upon Merchandizes, by which it appeareth he took nothing of Merchants by imposition without grant; for if he had, no doubt they would not have stuck to have put him in minde of it. But I pray consider what became of this motion of the Chancellor and Treasurer: The proposition had depended in Parliament many years; the effect was, the people entreated the King to resume all grants he had made from the beginning of his reign untill that time, being the twenty eighth year of his reign, excepting such as were made upon consideration valuable, that he might so enable himself by that mean by which he had impoverished himself and the whole Kingdom: This took effect, and the Statute of Resumptions was thereupon made the same year, which Record because it is not in print, and declareth these things with great gravity and authority: I will set down the very Text of it, so much as is material to our purpose.

Prayen your Commons in this your present Parliament assembled to consi-

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der, That where your Chancellor of your Realm of *England*, your Treasurer of *England*, and many other Lords of your Council, by your high commandment to your said Commons, at your Parliament holden last at *Westminster*, shewed and declared the State of this your Realm, which was that ye were indebted 372000 *l.* which is grievous, and that your livelihood in yearly value was but 5000 *l.* And forasmuch as this 5000 *l.* to your high and notable State to be kept, and to pay your said debts, will not suffice: Therefore that your high Estate may be relieved. And furthermore it was declared, That your expences necessary to your household without all other ordinary charge came to 24000 *l.* yearly, which exceedeth every year in expence necessary over your livelihood 19000 *l.* Also pleaseth it your Highness to consider, that the Commons of your said Realm be as well willing to their power, for the reliving of your Highness, as ever was people to any King of your Progenitors that raigned in your said Realm of *England*: But your said Commons been

28. *H.* 6. *Stat. de Resumpt. in Turri Lond.* not printed.

ſo impoveriſhed, what by taking victual to your houſhould, and other things in your ſaid Realm, and nought paid for it, and the quinzime by your ſaid Commons ſo ofren granted, and by the grant of Tunnage and Poundage, and by the grant of Subſidy upon Woolls, and other grants to your Highneſs, aud for lack of execution of Juſtice, that your ſaid poor Commons be full nigh deſtroyed; and if it ſhould continue longer in ſnch great charge, it would not in any wiſe be had, ne born: Wherefore pleaſeth it your Highneſs, the premiſſes graciouſly to conſider, and that ye by the advice and aſſent of your Lords Spiritual and Temporal, and by the authority of this your preſent Parliament, for the conſideration of your high Eſtate, and in comfort and eaſe of your poor Commons, would take, reſume, ſeiſe and retain in your hands and poſſeſſion all honors, &c.

This was very plain dealing by the people with their King, and this is the ſucceſs of the demand of ſupply and ſupport had in thoſe days, being required in point of gratification, without any recompence

compence or retribution for it. Thus then we have cleared this point, that between 50. *E.* 3. and 4. *Mariæ*, there was not one Impoſition ſet without aſſent of Parliament.

Queen *Mary* in the fourth year of her reign, upon the Wars with *France*, ſet an Impoſition upon Clothes for this conſideration, That the Cuſtom of Woolls was decayed, by reaſon for the moſt part they were made into Clothes, which afforded little Cuſtom; for that which in Wooll, paid for Cuſtom and Subſidy 40 *s.* made into Cloth paid but 4 *s.* 4 *d.* To recompence this by an indifferent equality, there was ſet upon a Cloth 5 *s.* 6 *d.* which Impoſition did not make up the loſs ſuſtained in the Cuſtom of Wooll, by 13 *s.* 4 *d.* in 40 *s.* This was *Juſtum*, but not *Juſte*. This religious Prince invironed with infinite troubles in the Church and Commonwealth, and much impoveriſhed by her devotion, in renouncing the profits of the Church-lands that were in the Crown by the ſuppreſſion, was the firſt that made digreſſion from the ſteps of her worthy Progenitors, in putting on that Impoſition without aſ-

ſent

sent of Parliament; for that very consideration of the loss of Custom, by turning of Wooll to Clothing, came into treaty in the 24. year of *E.* 3. when the art of Clothing began first to be much practised in this Kingdom, and then in the recompence of the loss so sustained in the decay of Custom of Woolls, there was set upon a Cloth by Act of Parliament above the olde Custom, 14 *d.* for a Denizen, and for an Alien 21 *d.* This is recited in a Record in the Exchequer, 48. *E.* 3. *Rot.* 1. *R. Thes. in origin.* But I pray you examine how this Imposition of Queen *Mary* was digested by the people. We see in the case of my Lord *Dier*, 1. *Eliz. fol.* 165. That the Merchant fonnd great greif at it, and made exclamation and suit to Queen *Elizabeth* to be unburdened of it: The very reason of their grief expressed in that case is, because it was not set on by Parliament, but by the Queens absolute power; so that was the ground of that complaint, the very point of right.

Orig. in Scac. 48. E. 3. Rot. 2. R. Thes 1. Eliz. Dier fo. 165.

This cause was referred to all the Judges, to report whether the Qu might set on this Imposition without assent

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of Parliament: They divers times had conference about it, but have not yet made report for the King; which is an infallible presumption, that their opinions were not for him; for it is a certain rule among us, that if a question concerning the Kings Prerogative, or his profit, be referred to the Judges, if their opinions be for the King, it will be speedily published, and it were indiscretion to conceal it; but if there be no publication, then we make no doubt, but that their opinions are either against the King, or at least they stick, and give none for him.

The same Queen *Mary* upon restraint of bringing in of French Commodities occasioned by the then wars with *France*, set an Imposition upon *Gascoyn* Wines, which continueth yet: So the Kingdom of *England* by the injustice of that Prince was clogged with these two heavy Impositions contrary to the right of the Kingdom, and the Acts of her Progenitors

Queen *Elizabeth* set on that upon sweet Wines, which grew also upon the occasion of the troubles with *Spain*. That upon Allome was none, it was rather

ther a Monopoly to Maſter *Smith* the Cuſtomer of *London*, for the ingroſſing of all Allomes into his own hands, for which priviledge he gave a voluntary Impoſition upon that Commodity: It was like the priviledge granted to *John Pechey* of the ſweet Wines by *E.* 3. for which the Patentee was called into the Parliament Houſe, 50. *E.* 3. and was there puniſhed, and his Patent taken away and cancelled.

What Impoſitions have been ſet on in the Kings time, I need not expreſs, they are ſet down particularly in the Book of Rates that is in print; they are not eaſily numbered: The time for which they are raiſed is not ſhort; the Patent prefixed to that book bearing date 28 *Julii*, 6 *Jacobi*, will inſtruct you ſufficiently in that point; they be limited to the King, his Heirs and Succeſſors: which I ſuppoſe is the firſt eſtate of Fee ſimple of Impoſitions that ever man read of.

My eighth and laſt Obſervation is upon Tunnage and Poundage given to the King of this Realm, upon Wares and Merchandizes exported and imported, which is an Impoſition by Act of Parliament,

ament, and as it will appear, was given out of the peoples good will, as a very gratification to the King, to enjoyn him thereby from the desire of voluntary Impositions, and to conclude him by that gift in Parliament from attempting to take any other without assent of Parliament; for after the ceasing of voluntary Impositions, these Parliamentary ones were frequent in the times of the King that succeeded; but they were never given but for years, with express caution how the money should be bestowed, As towards the defence of the Seas, protection of Traffick, or some such other publick causes: Sometimes special sequestrators made by Act of Parliament, by whose hands the money should be delivered, as 5. *R.* 2. *cap.* 3. in a printed Statute. The Rates that were given were very variable, sometimes 2 *s.* Tunnage, and 6 *d.* Poundage as 7. *R.* 2. 3 *s.* Tunnage, and 12 *d*, Poundage, 10. *R.* 2. which grants were not to endure, the longest of them above a year; 18 *d.* Tunnage, 6 *d.* Poundage; in 17. *R.* 2. 3 *s.* Tunnage and 12 *d.* Poundage granted to *H.* 4. in the thirteenth year of his reign for a certain.

5. *R.* 2. *Rot. Par.* 7. *R.* 2. *n.* 13. 10. *R.* 2. *n.* 12. 7. *R.* 2. *n.* 12.

certain time, in which Statute there is this clauſe, That this aide in time to come ſhould not be taken for an example to charge the Lords and Commons in manner of Subſidy, unleſs it be by the wills of the Lords and Commons, and that by a new grant to be made in full Parliament in time to come. This clauſe in good and proper conſtruction may be taken to be a very convention between the King and his people in Parliament, that he ſhould not from thenceforh, nor any of his Succeſſors ſet on Impoſitions without aſſent of Parliament. The like Impoſition was granted to *H.* 5. in the firſt year of his reign for a ſhort time towards the defence of the Realm, and ſafeguard of the Sea, upon condition expreſſed in the Act, that the Merchants Denizens, and ſtrangers coming into the Realm with their Merchandizes, ſhould be well and honeſtly uſed and handled, paying the ſaid Subſidy, as in the time of his Father, and his noble Progenitors Kings of *England*, without oppreſſion or extortion: In the end of which Act the Commons proteſted, being bound by any grant in time to come, for the purpoſes aforeſaid. *H.*6.

Rot. Par. 1. H. 5. *n.* 17.

H. 6. in the one and thirtieth year of his reign, had Tunnage and Pound age given him for his life. *E.* 4. had it given him the third year of his reign, as it appeareth in a Statute 12. *E* 4. *cap.* 3. *H.* 8. in the fifth year of his reign, and all since in the first year of their reigns have had it given them for term of their life, and being now so certainly setled, do reach further at that, from which they are in conscience and honor excluded, by this voluntary gratification: For can any man give me a reason, why the people should give this Imposition of Tunnage and Poundage above the due Custom upon all Commodities, if the King by his Prerogative might set on Impositions without assent of Parliament? and were not that a weak action in a King, to take that of his people as a benevolence from them, with limitation of the same, and in what it should be imploied, and how they will be used for it, and for what time he shall have it, which he might justly take without their consents, unclogged of these unpleasing incumbrances?

Rot. Par. 31. *H.* 6. 12. *E.* 4. *c.* 3. 6. *H.* 8. *c.* 12. 1. *E.* 6. *c.* 13. 1. *Mar.* *c.* 18. 1. *Eliz.* *c.* 19. 1. *Jac.* *c.* 33.

The Statute of Tunnage and Poundage made

made in our times, that are altogether inclined to flattery, do yet retain in them certain shews and rumors of those antient Liberties, although indeed the substance be lost, as in the Statute 1. *Jac.* *cap* 33. We declare that we trust, and have sure confidence of his Majesties good will towards us, in and for the keeping, and sure defending of the Seas, and that it will please his Highness, that all Merchants, as well Denizens as strangers coming into this Realm, be well and honestly entreated and demeaned for such things whereof Subsidy is granted, as they were in the time of the Kings Progenitors and Predecessors, without oppression to them to be done. By this clause, as it now continueth, the true intent of this Statute appeareth to be, that there ought no other Imposition to be laid upon Merchants besides these given by this Statute, and this intention hath been well interpreted by use and practice from the time of *E.* 3. to the time of Queen *Mary*, as before is declared.

1. *Jac.* c. 33.

Thus much of this last reason made from observation, and the action of

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our Nation. I will answer now such main objections as have been made against the peoples right, and have not been touched by me *obiter* in my passage through this discourse.

That which hath been most insisted upon is this, that the King by his prerogative Royal hath the custody of the Havens and Ports of this Island, being the very gates of this Kingdom; that he in his royal function and office is onely trusted with the keys of these gates; that he alone hath power to shut them, and to open them when, and to whom he in his Princely wisdom shall see good: that by the Law of *England* he may restrain the persons of any from going out of the Land, or from coming into it: That he may of his own power and discretion prohibit exportation and importation of goods and Merchandizes; and out of his prerogative and preheminence, the power of imposing, as being derivative, doth arise and result: for *Cui quod majus est, licet, & ei quod est minus licitum est*: So their reason briefly is this; the King may restrain the passage of the person, and of the goods; therefore he may suffer

them not to pass, but *sub modo*, paying such an Imposition for his sufferance, as he shall set upon them: For the grounds and propositions laid in this objection, I shall not be much against any one of them: others of them must be qualified ere they be confessed; but the inference and argument made upon them, I utterly deny; for in it there is *mutatio hypothesis*, and a transition from a thing of one nature to a thing of another: As the premises are of a power in the King onely fiduciary, and in point of trust and government, the conclusion infers a right of interest and gain; Admit the King had *Custodiam portuum*; yet he hath but the custody, which is trust, and not *Dominium utile*; he hath power to open and shut upon consideration of publike good to the people and State, but not to make gain and benefit by it; the one is protection, the other is expilation.

Portus sunt Publici. The Ports in their own nature are publike, free for all to go in and out; yet for the common good this liberty is restrainable by the wisdom and policy of the Prince, who is put in trust to discern the times when this natural liberty shall be restrained.

restrained. In 1. *H.7. fol.* 10 in the case of the Florentines for their Allome, the Lord Chief Justice *Hussey* doth write a Case, that in the time of *E.*4. a Legate from the Pope being at *Calice* to come into *England*, it was resolved in full Council (as the Book saith) before the Lords and Judges that he should not have licence to come into *England* unless he would take an Oath at *Calice*, that he would bring nothing with him that should be prejudicial to the King and his Crown. 1.*H.*7.10

The King by the Common Law may send his Writ, *Ne exeas regnum*, to any Subject of the Realm; but the surmise of the Writ is, *Quia datum est nobis intelligi, quod tu versus partes exteras absque licentia nostra clam destinas te divertere, & quam plurima nobis & coronæ nostræ prejudicia prosequi*, Fitzh. N. B. 85. b. So in point of Government, and common good of the Realm, he may restrain the person: But to conclude, therefore he may take money, not to restrain, is to sell Government, trust and common Justice, and most unworthy the divine Office of a King. But let us compare this *Fitzh. N. B.* 15. *b.*

power of the King in foraign affairs, with the like power he hath in Domeſtick Government. There is no queſtion but that the King hath the cuſtody of the gates of all the Towns and Cities in *England*, as well as all the Ports and Havens and upon conſideration of the Weal publike may open and ſhut them at his pleaſure; as if the infection of the ſickneſs be dangerous in places vicine to the City of *London*, the King may command that none from thoſe places ſhall come into the City: May he therefore ſet an Impoſition upon thoſe that he ſuffereth to come into the City? So, if by reaſon of infection he forbid the bringing of Wares and Merchandizes from ſome Cities or Towns in this Kingdom to any great Fare or Mart, ſhall he therefore reſtrain the bringing of Goods thither, unleſs money be given him by way of Impoſition?

The King in his diſcretion in point of equity, and for qualifying the rigor of the Law, may enjoyn any of his Subjects by his Chancellor from ſuing in his Court of Common Law; May he therefore make a benefit by reſtraining all

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from suit in his Courts, unless they pay him an Imposition upon their Suits? In 2. E. 3. in the case of the Earl of *Richmond* before-cited, the King had granted unto the men of great *Yarmouth*, that all the Ships that arrived at the Port of *Yarmouth*, which consisted of three several Ports, *Great Yarmouth*, *Little Yarmouth*, and *Gernestow*, should arrive all at *Great Yarmouth*, and at no other place within that Port. The lawfulness of this Patent being in question in the Kings Court, it was reasoned in the Kings behalf for the upholding of the grant, as it is now, that the King had the custody of the Port, he might restrain Merchants fron landing at all in his Kingdom: Therefore out of the same power might appoint where, and in what Haven they should land, and no other: This Patent was demurred on in the Kings Bench, as being granted against the Law; but the Case depending, was adjourned into Parliament for the weight and consequence of it, and there the Patent was condemned, and a Law made against such and the like grants. 2. E. 3. 7. 5. E. 3. cap. 1.

The Presidents that were vouched for

maintenance of this power of restraint in the King, were four produced almost in so many hundred years, whereof two were in the second year of *E.* 1. one in the tenth year of *E.* 3. another in the seventeenth year of *H.* 6. since which time we hear of none but by Act of Parliament, as they had been usually and regularly before. To these I will give answer out of themselves, out of the common Law, out of divers Statutes, and out of the practice of the Commonwealth. The restaint in the time of *E.* 1. the one of them was to forbid the carrying of Woolls out of the Realm, the other was to forbid all Traffick with the Flemings. That of 10. *E.* 3. was to restrain the exportation of Ship-timber out of the Realm. That of 17. *H.* 6. to prohibite Traffique with the Subjects of the Duke of *Burgundy*. These presidents are rare, yet they have in them inducements out of publique respects to the Commonwealth; for the rule of Common Law in this case, I take it to be as the reverend Judge Sir *Anthony Fitzherbert* holds in his Writ of *Ne exeas regnum in Nat. Br.* that by the Common Law any

Rot. Par. 2. E. 1. *n.* 16.
Rot. fin. 2. E. 1. *n.* 17.
Ro. claus. 10. E. 3. *dor.* 31.
Ro. claus. 17. *H.* 6. *in dorso.*
Fitzh. N. B. 85.

any man may go out of the Kingdom, but the King may upon causes touching the good of the Commonwealth restrain any man from going by his Writ or Proclamation, and if he then go, it is a contempt. This opinion of his is confirmed by the Book, 1. *Eliz. fol.* 165. *Dier.* 12. & 13. *Eliz. Dier.* 296. In like manner if a Subject of *England* be beyond sea, and the King send to him to repair home, if he do it not, his Lands and goods shall be seised for the contempt; and this was the case of *William de Britain* Earl of *Richmond*, 19. *E.* 2. He was sent by the King into *Gascoyne* on a message, and refused to return, for which contempt his Goods, Chattels, Lands and Tenements were seised into the Kings hands: The Record is cited 2, & 3. *Phil. & Mar.* in my *L. Dier. fol.* 128. *B.* and the Law there held to be so at that time upon a question moved in the Queens behalf against divers that being beyond the Seas refused to return upon commandment sent unto them to that purpose: The same is again for Law confirmed in the Dutchess of *Suffolke*, Case 2 *Eliz. Dier.* 176. But the Common Law was

Dier. 1. *El.* 165. *Dier.* 13. *El.* 296.

19. E. 2.

2, & 3. *P. & M. Dier.* 128

Dier. 2. *El.* 176. 5 *R.* 2. *c.* 2

altered in this point by the Statute of 5. *R.* 2. *cap.* 2. by which the paſſage of all people is defended that they may not go without licence, except the Lords and other great men of the Realm, Merchants, and Souldiers: So for the Merchants, which are the people dealt withal, in the buſineſs in hand, the Common Law remaineth as it was before the Statute, and ſo it was held, 12. *El. Dier.* 196. where the caſe was, An Engliſh Merchant being a Papiſt went over-ſea, and being there, did ſettle himſelf to remain there, for the enjoying the freedom of his conſcience: It was moved here in *England*, that his going without licence ſhould be a contempt, becauſe he went not to traffique as a Merchant, but for the cauſe of Religion: It was reſolved, no ſuch averment would be taken in this caſe, for that the very calling and vocation of being a Merchant did give him liberty to go out of the Kingdom when he would, and therefore the ſecret intent of his going was not to be enquired after, *Sed lex inſpicit quod veriſimilius.* Therefore it was in this caſe held no contempt, but

Dier. 12. *El.* 196.

but at this day the Law is as it was before, 5. *R.* 2. *cap.* 2. for that Statute is repealed, 4. *Jac. cap.* 1. And all men whatsoever are now at liberty by the Common Law to pass out of the Realm. There is onely against this inconvenient liberty a Proclamation dated at *Westminster*, 9. *Jul.* 5. *Jac.* To the very same effect in point of restraint of passage with the Statute of *R.* 2. So the Subject is in this much the more at ease and liberty then he was before: That his going over-sea without licence doth not induce any forfeiture, but onely incurreth the censure of a contempt. and therefore it were to be wished that some firm Law might be made in the case, both for the execution of so good a point of policy, and for the more quiet of the State, in knowing the certainty of the punishment for the offence.

4 *Jac. c.* 1

Proclam. 9. *Jul.* 5. *Jac.*

This liberty and freedom of Merchants hath been strengthened and confirmed by many notable Laws before recited, as 14. *E.* 3. *stat.* 2. *cap.* 2. 15. *E.* 3 *stat.* 2. *cap.* 5. 18 *E.* 3. *stat.* 1. *cap.* 3. and divers other, and therefore though it be admitted that the King may restrain per-

14. *E.* 3. *st.* 2. *c.* 2. 15. *E.* 3. *st.* 2. *c.* 5. 18. *E.* 3. *st.* 1. *c.* 3.

persons and goods, yet it may well be denied, that he hath power of himself alone without assent of Parliament simply and indefinitely to restrain all traffique in general, or to shut up all the Havens and Ports, and to bar the vent and issuing of Wares and Merchandizes of the whole Kingdom, as appeareth plainly that this hath been done this three hundred years, or near thereabouts by Act of Parliament onely, and that the Kingdom of *England* made this matter of Traffique so tender a case to deal in, as that it hath ever held it a matter fit for the consultation of the great Council of the Kingdom, and for no other.

11.E.3. *cap.*1. In 11. *E.*3. The exportation of Woolls was prohibited by Act of Parliament, in which Statute there was this clause, Untill that by the King and his Council it be thereof otherwise provided: which power so given to the King to be used for the good of the Commonwealth, gave occasion to him to abuse it to his profit and commodity, by giving licences of transportation to all that would give forty shillings upon a Sack of Wooll above the due Custom. This appeareth in the

the Records in the Exchequer, 13. E 3. *Rot. 2. Rem. Thes.* I will describe the Record that you may perceive the ground of it the better, *Rex collectoribus Custumæ in portu magnæ Yermouth salutem. Quia concessimus dilecto & fideli nostro Hugoni de Wriothsley, quod ipse viginti & septem saccos lanæ & dimid. de Lanis suis propriis in portu predicto carriare, & eas usque Antwerpe ad stapulam nostram ibidem ducere possit, solvendo ibidem dilecto Clerico nostro Wilielmo de Northwel custodi guarderobæ nostræ 40 s. pro quolibet sacco pro custuma & subsidio inde nobis debitis, &c. vobis mandamus quod predict. Hugon. dictas viginti septem saccos lanæ & dimid. in portu predicto carriare permittatis, &c.* Aud another the same year *Rex collectoribus custumæ, &c. Cum nuper ordinaverimus quod passagium lanarum, &c. apertum existeret, & quod sigillum nostrum quod dicitur Coket, quod prius claudi & subserra custodiri mandavimus aperietur, & apertum teneretur, ideo vobis mandavimus quod sigillum predictum in portu predicto aperiri, & apertum teneri faciatis, & omnes illos qui hujusmodi lanas carriare & ducere velint permittatis, receptis*

13. H. 3. R. Thes. rot. 2.

13. E. 3. rot. 12. R. Thes.

receptis prius ab iisdem, viz. de mercatoribus & aliis indigenis 40 s. de quolibet ſacco lanæ. Divers other ſuch ſales of Traffick occaſioned by this Parliamentary reſtraint were made between 11. *E.* 3. that the reſtraint was made, and 14. *E.* 3. that this inconvenience being eſpied, the Sea was opened by Statute, and the reſtraint removed, 14 *E.* 3. *ſtat* 2. *c.* 2. 15. *E.* 3. *cap.* 5. *ſtat* 2. and this forty ſhillings ſo exacted was complained of as an Impoſition in Parliament, and the occaſion and the effect were both taken away together by Act of Parliament, 14. *E.* 3. *ſtat.* 2. *cap.* 2. & *ſtat.* 2. *cap.* 1.

14 E. 3. *ſt.* 2. *c.* 2. 15. E. 3. *c.* 5 *ſt.* 2. 14. E. 3. *c.* 21. *ſt.* 1. *ſt.* 2. *c.* 1.

It followed in all Kings times ſithence the death of *E.* 3. that this opening and ſhutting of the Havens, reſtraining and enlarging of Traffick was done by Act of Parliament.

I will give one inſtance in the reign of every King, 5. *R.* 2. *cap.* 2. *ſtat.* 1. For the paſſage of Wooll, Wooll-fells, and Leather. 6. *H.* 4. *cap.* 4. For the Traffique and Commerce with Merchants Aliens, 2. *H.* 5. *cap.* 6 *ſtat.* 2. For the reſtraint of Staple Commodities to places certain, and for the Traffique of the Merchants of the weſt,

5. *R.* 2. *c.* 2. *ſt.* 2. 6 *H.* 4. *c.* 4 2. *H.* 5. *c.* 6. *ſt.* 2.

weſt, 27. *H.6. cap.* 1. that is enacted in parliament which is contained in the Proclamation, 17. *H.6.* cited for a preſident, that is, becauſe the Duke of *Burgundy* made an Ordinance whereby the Traffick of the Engliſh Nation was reſtrained, that therefore the Engliſhmen ſhould not traffick with the Subjects of the Duke of *Burgundy*. The ſame thing enacted upon the like occaſion, 4. *E.* 4. *c.* 1. 19. *H.7. c.* 21. The importation of divers Commodities forbidden as being prejudicial to the Manufactures within the Realm, 6. *H.* 8. *cap.* 12. The exportation of *Norfolk* Woolls out of the Realm forbidden, 26. *H.* 8 *cap.* 10. Power is given to the King to order and diſpoſe of the Traffick of Merchants at his pleaſure, and the reaſon is given, becauſe otherwiſe the Leagues and Amities with foreign Princes might be impeached by reaſon of reſtraint made by divers ſtatutes then ſtanding on foot, whereby it appeareth that it was not then taken to be Law, that the King had an abſolute power in himſelf to order and diſpoſe of the courſe of Traffick without help of a Statute. 2. *E.*6. *cap.*9. Exportation of Leather reſtrained,

27. *H.6. c.*1.

4 *E.*4.*c.*1

19. *H.*7. *cap.*21.

6. *H.* 8. *cap.* 12.

26. *H.*8. *cap.* 10.

2 *E.*6.*c.*9

1, & 2.

1, & 2. P. & M. c. 5. 1, & 2. *Ph. & Mar.* The exportation of Herring, Butter, Cheese, and other Victuals forbidden, 18. *Eliz. cap.* 8. The exportation of Tallow, Raw Hides, Leather. So in all times no use of Proclamations in matters of this nature, but Acts of Parliament still procured: Wherefore in mine opinion it behoveth them that do so earnestly urge this argument, (the King may restrain Traffick, therefore may impose,) to prove better then they have done, that the King may restrain Traffick of his own absolute power: For as the natural policy and constitution of our Commonwealth is, we may better say, that is Law which is *de more gentis*, then that which floweth from the reason of any man guided by his general notion and apprehension of power regal, *in genere*, not *in individuo*.

18 El. c. 8

The last assault made against the right of the Kingdom, was an Objection grounded upon policy, and matter of State, as that it may so fall out that an Imposition may be set by a foreign Prince that may wring our people, in which case the counterpoise is, to set on the like here

here upon the Subjects of that Prince, which policy, if it be not ſpeedily executed, but ſtayed until a Parliament, may in the mean time prove vain and idle, and much damage may be ſuſtained that cannot afterwards be remedied.

This ſtrain of policy maketh nothing to the point of right; our rule is in this plain Commonwealth of ours, *Oportet neminem eſſe ſapientiorem legibus*: If there be an inconvenience, it is fitter to have it removed by a lawful means, then by an unlawful: But this is rather a miſchief then an inconvenience, that is a prejudice in preſent of ſome few, but not hurtful to the Commonwealth: And it is more tolerable to ſuffer an hurt to ſome few for a ſhort time, then to give way to the breach and violation of the right of the whole Nation: For that is the true inconvenience, neither need it be ſo difficult or tedious to have the conſent of the Parliament, if they were held as they ought, or might be; but our ſureſt guide in this will be the example of our Anceſtors in this very caſe, and that in the time of one of the moſt politick Princes that ever reigned in this Kingdom, 7. *H.* 7. *cap.* 7.

7. *H.* 7. *cap.* 7.

*cap.*7. you ſhall finde an Act of Parliament, in which it was recited that the Venetians had ſet upon the Engliſh Merchants that laded Malmeſeys at *Candy* four duckets of gold upon a But, which in ſterling is eighteen ſhillings the But. It was therefore enacted that every Merchant ſtranger that brought Malmſey into this Kingdom ſhould pay eighteen ſhillings the But over and above the due Cuſtom uſed; this Impoſition to endure until they of *Venice* had ſet aſide that of four duckets the But upon the Engliſhmen.

Much hath been learnedly uttered upon this argument in the maintenance of the peoples right, and in anſwering that which hath been preſſed on the contrary; but my meaning is not to expreſs in this Diſcourſe all that hath or may be ſaid on either ſide, but onely to make a remembrance ſomewhat larger of that which I my ſelf offered as my *ſymbolum* towards the making up of this great reckoning of the Commonwealth, which if it be not well audited, may in time coſt the Subjects of *England* very dear. My hope is of others that labored very worthily

thily in this buſineſs, that they will not ſuffer their pains to die, and therefore I have forborn to enter into their Province. I will end with that ſaying of that true and honeſt Counſellor *Philip Comines* in his fifth book, the 18. chapter, *That it is more honorable for a King to ſay, I have ſo faithful and obedient Subjects, that they deny me nothing I demand, then to ſay, I levy what me liſt, and I have priviledges ſo to do.* *Ph. Com. l. 5. c. 18.*

After the Kings Right to Impoſe had been thorowly examined in Parliament, and there determined not to be in him alone, without aſſent of Parliament, among other Petitions of grievance given unto his Majeſty, this hereafter was concerning Impoſitions.

THe policy and conſtitution of this your Majeſties Kingdom, appropriates unto the Kings of this Realm, with aſſent of Parliament, as well the ſoveraign power of making Laws, as that of taxing or impoſing upon the Subjects Goods or Merchandizes, wherein they juſtly have ſuch a propriety, as may not without their conſent be altered or changed: This is the cauſe that the people of this Kingdom, as they have ever ſhewed themſelves faithful and loving to their Kings, and ready to aid them in all their juſt occaſions with voluntary contributions: ſo have they been ever careful to preſerve their own Liber-

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ties and Rights, when any thing hath been done to prejudice or impeach the same: And therefore when their Princes, either occasioned by War, or by their over-great bounty, or by any other necessity, have without consent of Parliament set on Impositions either within the Land, or upon Commodities exported or imported by the Merchants, they have in open Parliament complained of it, in that it was done without their consents, and thereupon never failed to obtain a speedy and full redress, without any claim made by the Kings of any Power or Prerogative in that point. And though the Law of Propriety be originally and carefully preserved by the common Laws of this Realm, which are as antient as the Kingdom it self, yet those famous Kings for the better contentment and assurance of their loving Subjects, agreed that this old fundamental Right should be further declared and established by Act of Parliament, wherein it is provided that no such charge should ever be laid upon the people without their common consents, as may

appear by ſundry Records of former times.

We therefore your Majeſties moſt humble Commons aſſembled in Parliament, following the example of this worthy care of our Anceſtors, and out of our duty to thoſe for whom we ſerve, finding that your Majeſty without advice and conſent of your Lords and Commons, hath lately in time of peace ſet both greater Impoſitions, and far more in number then any your noble Anceſtors did ever in time of War, do with all humility preſent this moſt juſt and neceſſary Petition unto your Majeſty, That all Impoſitions ſet without aſſent of Parliament, may be quite aboliſhed, and taken away; And that your Majeſty likewiſe in imitation of your royal Progenitors will be pleaſed, that a Law in your time, and during this Seſſion of Parliament may be alſo made to declare that all Impoſitions of any kinde ſet, or to be ſet upon your people, their Goods, or Merchandizes, ſave onely by common conſent in Parliament, are and ſhall be void: Wherein your Majeſty ſhall not onely

onely give your Subjects great satisfaction in point of their Right, but also bring exceeding joy and comfort to them who now suffer, partly through the abating of the price of native Commodities, and partly through the raising of all foreign, to the overthrow of Merchants and Shipping, the causing a general dearth, and decay of all wealth among your people, who will be thereby no less discouraged then disabled to supply your Majesty when occasion shall require.

FINIS.

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